



# **PUBLIC EMPLOYMENT RELATIONS BOARD**

## **2003-2004 ANNUAL REPORT**

**October 15, 2004**



**ARNOLD SCHWARZENEGGER, GOVERNOR**

**STATE OF CALIFORNIA**

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### **Board Members**

JOHN C. DUNCAN  
ALFRED K. WHITEHEAD  
THEODORE G. NEIMA

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October 15, 2004

Dear Members of the Legislature and Fellow Californians:

The Public Employment Relations Board (PERB) reports to the Legislature on an annual basis. I am pleased to tell you, on behalf of myself, the Board members and staff, that these are busy times at PERB. Our quasi-judicial administrative Board oversees collective bargaining statutes encompassing 7000 public employers and over 2 million employees. This Board effectively provides employers, unions and employees a neutral forum in which to resolve disputes.

The number of cases reviewed each year by the Board has significantly increased since the Meyers Miliias Brown Act was added to PERB's jurisdiction through legislation passed in 2001. The number of unfair labor practices charges climbed from 461 in FY 2001 to 838 in FY 2004.

The Board emphasizes mediation and conciliation as a first step to resolution with a focus on striving for quick resolution. Approximately seventy-five percent of the Board's complaints are resolved through voluntary settlement agreements. In the cases where mediation is not successful, the parties are provided the opportunity to litigate their disputes quickly and efficiently. One of the Board's most important jobs is to provide guidance to the parties through clear and concise decisions.

All of the Board members are committed to improving even further the swift resolution of disputes at all levels in the months before us. The public employees, unions and employers of this state deserve a timely review of their disputes. I look forward to working with the Board and our staff, toward this goal.

All of us at PERB hope that you find this report informative and helpful. We look forward to the next year of our service to the people of California.

Respectfully submitted,

John C. Duncan  
Chairman

## Introduction of Board Members and Administrators

### Board Members

**John Duncan** was appointed to the Board and designated Chairman by Governor Arnold Schwarzenegger on February 26, 2004. Prior to his appointment, he was president of Duncan Consulting, Inc. and served as a member of the Governor-Elect's Transition Team. Mr. Duncan previously served in the cabinet of Governor Pete Wilson. He was the Director of the Department of Industrial Relations and principal advisor to Governor Wilson on labor and employment issues. Following that service he was chairman of the California Employment Training Panel. Before his state service, Mr. Duncan was special assistant to then Secretary of Defense, Caspar Weinberger. He was assistant to the secretary at the Department of Defense from 1985 to 1987, and special assistant to the deputy assistant secretary of defense for International Security Affairs, East Asia and Pacific Affairs from 1983 to 1984. Mr. Duncan is a graduate of the University of California, Berkeley with a bachelor's degree in history and holds a masters degree in public administration from Harvard University's John F. Kennedy School of Government. His term expires on December 31, 2009.

Appointed to the Board on January 1, 2001, **Alfred K. Whitehead** is General President Emeritus for the International Association of Fire Fighters (IAFF), where he served from 1988 to August 2000. In 1982, he was elected General Secretary/Treasurer of the IAFF and was re-elected through 1988. Mr. Whitehead served as a fire captain for the Los Angeles County Fire Department from 1954 to 1982. He was a member of the Los Angeles County Fire Fighters Local 1014 for more than 20 years and was President for 12 years. Mr. Whitehead is a former member of the Los Angeles County Board of Retirement and served as an elected official to the National Conference on Public Employee Retirement Systems for more than 17 years. He attended East Los Angeles College, is a veteran of the United States Army, and also served as a United States Merchant Marine. His current term expires on December 31, 2005.

Appointed to the Board on August 7, 2001, **Theodore G. Neima** was formerly a Grand Lodge Representative for the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM), a position he held since 1979. In 1993, he assumed responsibility in the thirteen Western United States for coordination of IAM cases before employment relations agencies. This included the presentation of representational and unfair labor practice cases before the National Labor Relations Board, the Federal Labor Relations Authority and state employment relations boards, including PERB. In 1983 and 1984, he served as the Special Assistant to the California Labor Commissioner. His current term expires on December 31, 2004.

Appointed to the Board on March 29, 2000, **Richard T. Baker** was previously a self-employed labor relations consultant. From 1973 to 1995, he was the owner of the labor relations and consulting firm of Blanning and Baker Associates in Sacramento, San Francisco and Los Angeles. Mr. Baker earned a Bachelor of Arts Degree from California State University, Sacramento. He served through February 2004.

## Legal Advisers

Appointed by Governor Arnold Schwarzenegger as legal adviser to Chairman John C. Duncan, April 1, 2004, **Bilenda Harris-Ritter** is a graduate of the University of Southern California. She received a degree in Journalism and worked as a reporter, editor and in corporate communications. Prior to attending law school she was press deputy to a member of the California State Assembly. She also represented California Metalforming as a lobbyist and was a member of the Machine Guarding Advisory Board to OSHA from 1983-1986.

Ms. Harris-Ritter graduated from Southwestern University School of Law in Los Angeles. Prior to her appointment she was in private civil practice. She has been a certified specialist in workers compensation law for several years. She served as a workers compensation administrative law judge pro tempore at the Stockton Workers Compensation Appeals Board and served two terms as president of the workers' compensation section of the Sacramento County Bar Association. Ms. Harris-Ritter also served as president of the Valley Industrial Claims Association and is Treasurer of the Junior League of Sacramento. In 1997 she became an arbitrator for the National Association of Securities Dealers and served as Chair of the City of Folsom Redevelopment Advisory Committee. Ms. Harris-Ritter recently completed an intensive program in mediation training at Pepperdine University School of Law. A founding member of the Crime Victims Assistance Association of Arkansas, she has been instrumental in bringing changes to clemency-procedure laws in Arkansas.

Appointed as Legal Adviser to Member Alfred K. Whitehead in March 2002, **Laurie Epstein-Terris** earned her B.A. in Economics from the University of Colorado, Boulder, an M.S. in Industrial Relations from the University of Wisconsin, Madison, and her J.D. from the University of California, Davis School of Law. She has been a member of the State Bar since 1984. From 1988 to March 2002, she served as Senior Staff Counsel for the Department of Water Resources and part-time as a Hearing Officer over bid protests for the State Board of Control. In 1987 to mid 1988, she was employed as Staff Counsel with the Department of General Services. While a law student, Ms. Epstein-Terris served as a legal intern for Board Member John Jaeger and in 1986-1987, was employed as legal counsel in PERB's General Counsel's Office.

Appointed as Legal Adviser to Member Richard T. Baker in February 2003, **Timothy G. Yeung** was previously a Deputy Attorney General with the California Department of Justice where he specialized in employment litigation from 1999 to 2003. From 1996 to 1999, he was a Labor Relations Counsel with the California Department of Personnel Administration. Mr. Yeung earned his B.S. in Business Administration from U.C. Berkeley and his J.D. from U.C. Davis where he served as Senior Research Editor for the U.C. Davis Law Review. Mr. Yeung also currently serves as a member of the City of Davis Personnel Board.

## **Administrators**

Chief Administrative Law Judge **Fred D'Orazio** was first employed as an administrative law judge for the Public Employment Relations Board in 1978. He was promoted to chief administrative law judge in 2003. He served for ten years as annual editor of California Public Sector Labor Relations, a treatise sponsored by the Employment and Labor Law Section of the State Bar of California and published by Matthew Bender. He authored a Pocket Guide to the Ralph C. Dills Act, published by the California Public Employee Relations, Institute of Industrial Relations, University of California, Berkeley. He has also taught public sector labor law at Golden Gate University School of Law and administrative law at University of San Francisco School of Law. He received his B.S. from George Washington University and his J.D. from American University, Washington College of Law. Prior to joining PERB in 1978, he was Assistant General Counsel for the National Treasury Employees Union.

PERB General Counsel **Robert Thompson** began working for PERB in 1980 as a Legal Adviser to then Chair Harry Gluck. He has also worked as a Regional Attorney and Deputy General Counsel. He received a Bachelor of Sciences degree in Chemical Engineering from Northwestern University and is an adviser to the Executive Committee of the Labor and Employment Law Section of the State Bar of California.

**Anita I. Martinez** has been employed with PERB since 1976 and has served as San Francisco Regional Director since 1982. Her duties include supervision of the regional office, investigation of representation cases and unfair practice charges, and the conduct of settlement conferences, representation hearings, and elections. Before joining PERB in 1976, Ms. Martinez worked for the National Labor Relations Board in San Francisco and the Agricultural Labor Relations Board in Sacramento and Salinas. A contributing author of the Matthew Bender treatise, California Public Sector Labor Relations, she has also addressed management and employee organization groups regarding labor relations issues. A San Francisco native, Ms. Martinez received her B.A. from the University of San Francisco.

**Les Chisholm** has served as Sacramento Regional Director for PERB since 1987. His duties include investigation of representation cases and unfair practice charges, and conduct of settlement conferences and representation hearings and elections. Mr. Chisholm also has responsibilities in the areas of legislation, rulemaking and computer projects for the Board. He received an M.A. in political science from the University of Iowa.

**Eileen Potter** began working for PERB in 1993 as the Administrative Officer. Her state service includes service in the Governor's Office of Planning and Research (OPR) from 1979 through 1990 culminating in her appointment as the Assistant Chief of Administration. After leaving OPR, Ms. Potter worked at the Office of Statewide Health Planning and Development and the Department of Health Services before coming to PERB as its Administrative Officer. She has a degree in Criminal Justice Administration with minors in Accounting and English from California State University, Sacramento.



## **II. OVERVIEW**

### **Statutory Authority and Jurisdiction**

The Public Employment Relations Board (PERB or Board) is a quasi-judicial agency created by the Legislature to oversee public sector collective bargaining in California. The Board administers four collective bargaining statutes, ensures their consistent implementation and application, and adjudicates disputes between the parties subject to them. The statutes administered by PERB prior to July 1, 2001 were: the Educational Employment Relations Act (EERA) of 1976 (Gov. Code sec. 3540, et seq.), authored by State Senator Albert S. Rodda, establishing collective bargaining in California's public schools (K-12) and community colleges; the State Employer-Employee Relations Act of 1978, known as the Ralph C. Dills Act (Dills Act) (Gov. Code sec. 3512, et seq.), establishing collective bargaining for State Government employees; and the Higher Education Employer-Employee Relations Act (HEERA) of 1979 (Gov. Code sec. 3560, et seq.), authored by Assemblyman Howard Berman, extending the same coverage to the California State University and University of California systems and Hastings College of Law.

As of July 1, 2001, PERB acquired jurisdiction over the Meyers-Milias-Brown Act (MMBA) of 1968, which established collective bargaining for California's municipal, county, and local special district employers and employees. This occurred as a result of Governor Gray Davis' signing of Senate Bill 739, authored by State Senator Hilda Solis (Statutes of 2000, Chapter 901). PERB's jurisdiction over the MMBA excludes peace officers, management employees and the City and County of Los Angeles.

On January 1, 2004, AB 199 took effect expanding PERB's jurisdiction to include the supervisory employees of the Los Angeles County Metropolitan Transportation Authority.

With the passage of SB 739, approximately 2 million public sector employees and their employers are included within the jurisdiction of the five Acts administered by PERB. Approximately 675,000 employees work for California's public education system from pre-kindergarten through and including the community college level. Approximately 125,000 employees work for the State of California. The University of California, California State University and the Hastings College of Law employ approximately 100,000. The remainder are employees of California's cities, counties, special districts and the Los Angeles County Metropolitan Transportation Authority.

### **PERB's Purpose and Duties**

#### **The Board**

The Board itself is composed of up to five members appointed by the Governor and subject to confirmation by the State Senate. Board members are appointed to five-year terms, with the term of one member expiring at the end of each calendar year. In addition to the overall responsibility for administering the five statutes, the Board itself

acts as an appellate body to hear challenges to proposed decisions that are issued by the staff of the Board. Decisions of the Board itself may be appealed under certain circumstances, and then only to the state appellate courts. The Board, through its actions and those of its staff, is empowered to:

- Conduct secret ballot elections to determine whether or not employees wish to have an employee organization exclusively represent them in their labor relations with their employer;
- Prevent and remedy unfair labor practices, whether committed by employers or employee organizations;
- Deal with impasses that may arise between employers and employee organizations in their labor relations in accordance with statutorily established procedures;
- Ensure that the public receives accurate information and has the opportunity to register its opinions regarding the subjects of negotiations between public sector employers and employee organizations;
- Interpret and protect the rights and responsibilities of employers, employees and employee organizations under the Acts;
- Bring action in a court of competent jurisdiction to enforce PERB's decisions and rulings;
- Conduct research and training programs related to public sector employer-employee relations;
- Take such other action as the Board deems necessary to effectuate the purposes of the Acts that it administers.

During fiscal year 2003-2004, the Board issued 141 decisions. In comparison, the Board issued 87 decisions the previous fiscal year. A summary of the Board's 2003-2004 decisions is included in the Appendices beginning at page 22.

### **Major PERB Functions**

The major functions of PERB involve: (1) the administration of the statutory process through which public employees freely select employee organizations to represent them in their labor relations with their employer; (2) the evaluation and adjudication of unfair practice charges; (3) the appellant filings to the Board itself; and (4) the legal functions performed by the Office of the General Counsel.

Representation: The representation process normally begins when a petition is filed by an employee organization to represent employees in classifications which reflect an internal and occupational community of interest. In most situations, if only one employee organization petition is filed, with majority support, and the parties agree on the description of the bargaining unit, the employer must grant recognition. If more than one employee organization is competing for representational rights of the same bargaining unit, an election is mandatory.

If either the employer or an employee organization disputes the appropriateness of the proposed bargaining unit, a Board agent convenes a settlement conference to assist the parties in resolving the dispute. If the dispute cannot be settled voluntarily, a Board agent conducts a formal investigation and/or hearing and issues a written determination which sets forth the appropriate bargaining unit, or modification of that unit, based upon application of statutory unit determination criteria and appropriate case law to the facts obtained in the investigation or hearing. Once an initial bargaining unit has been established, PERB conducts a representation election in cases in which the employer has not granted recognition to an employee organization. PERB also conducts decertification elections when a rival employee organization or group of employees obtains sufficient signatures to call for an election to remove the incumbent organization. The choice of "No Representation" appears on the ballot in every representation election.

Representation Section staff also assist parties in reaching negotiated agreements through the mediation process provided in EERA, HEERA, and the Dills Act, and through the fact-finding process provided under EERA and HEERA. If the parties are unable to reach an agreement during negotiations, either party may declare an impasse. At that time, a Board agent contacts both parties to determine if they have reached a point in their negotiations at which their differences are so substantial or prolonged that further meetings without the assistance of a mediator would be futile. Once PERB has determined that an impasse exists, the State Mediation and Conciliation Service of the Department of Industrial Relations is contacted to assign a mediator.

In the event settlement is not reached during mediation, either party, under EERA and HEERA, may request the implementation of statutory fact-finding procedures. PERB provides lists of neutral factfinders who make findings of fact and advisory recommendations to the parties concerning terms of settlement.

A summary of PERB's representation activity is included at page 19.

Unfair Practice Charges: The evaluation and adjudication of unfair practice charges is another major function performed by PERB. An unfair practice charge may be filed with PERB by an employer, employee organization, or employee, alleging that an employer or employee organization has engaged in conduct that is unlawful under one of the Acts administered by PERB. Examples of unlawful employer conduct are: refusing to negotiate in good faith with an employee organization; disciplining or

threatening employees for participating in union activities; or promising benefits to employees if they refuse to participate in union activity. Examples of unlawful employee organization conduct are: threatening employees if they refuse to join the union; disciplining a member for filing an unfair practice charge against the union; or failing to represent bargaining unit members fairly in their employment relationship with the employer.

An unfair practice charge filed with PERB is evaluated by staff to determine whether a prima facie violation of the statute has been established. A charging party establishes a prima facie case by alleging sufficient facts to permit a reasonable inference that a violation of the EERA, Dills Act, HEERA, MMBA or TEERA has occurred. If it is determined that the charge fails to state a prima facie case, a Board agent issues a warning letter notifying the charging party of the deficiencies of the charge. The charging party is afforded time to either amend or withdraw its charge. If the charge is neither amended nor withdrawn, the Board agent dismisses it. The charging party may then appeal the dismissal to the Board itself.

If the Board agent determines that a charge, in whole or in part, states a prima facie case of a violation, a formal complaint is issued. The respondent is then given an opportunity to file an answer to the complaint.

Once a complaint has been issued, an Administrative Law Judge (ALJ) or other PERB agent is assigned to the case and calls the parties together for an informal settlement conference, usually within 30 days of the date of the complaint. If settlement is not reached, a formal hearing before a PERB ALJ is scheduled, normally within 90 days of the date of the informal conference. The 90-day wait for a formal hearing represents an increase of 30 days from prior fiscal years. Following this adjudicatory proceeding, the ALJ prepares and issues a proposed decision. A party to the case may then file an appeal of the proposed decision to the Board itself. The Board itself may affirm, modify, reverse or remand the proposed decision.

Proposed decisions which are not appealed to the Board itself are binding upon the parties to the case but may not be cited as precedent in other cases before the Board.

Decisions of the Board itself are both binding on the parties to a particular case and precedential. A digest of PERB decisions is available on our website:  
<http://www.perb.ca.gov/>.

**Appeals Office:** The Appeals Office, under direction of the Board itself, ensures that all appellate filings comply with Board regulations. It maintains case files, issues decisions rendered and prepares administrative records filed with California appellate courts. This office is the main contact with parties and their representatives while cases are pending before the Board itself.

Office of the General Counsel: The legal representation function of the Office of the General Counsel includes:

- Defending final Board decisions or orders in unfair practice cases when parties seek review of those decisions in state appellate courts;
- Seeking enforcement when a party refuses to comply with a final Board decision, order or ruling, or with a subpoena issued by PERB;
- Seeking appropriate interim injunctive relief against those responsible for certain alleged unfair practices;
- Defending the Board against attempts to stay its activities, such as complaints seeking to enjoin PERB hearings or elections; and
- Submitting amicus curiae briefs and other motions, and appearing in cases in which the Board has a special interest or in cases affecting the jurisdiction of the Board.

A summary of the litigation activity of the Office of the General Counsel is included later in this report.

### **Other PERB Functions and Activities**

Information Requests: As California's expert administrative agency in the area of public sector collective bargaining, PERB is consulted by similar agencies from other states concerning its policies, regulations and formal decisions. Information requests from the Legislature and the general public are also received and processed. Additionally, PERB cooperates with the Institute of Industrial Relations of the University of California, Berkeley, in the dissemination of information concerning PERB policies and actions to interested parties throughout the State.

### **Support Functions and Board Operations**

The Administration Section provides support services to PERB, such as business services, personnel, accounting, information technology, mail and duplicating. This section also engages in budget development and maintains liaison with the Department of Finance and other agencies within State Government.

PERB emphasizes automation as a means of increasing productivity, allowing it to handle increased workload with reduced staffing. PERB has also moved forward with the full development of its website, allowing those who do business with PERB the ability to access summaries of PERB Decisions, on-line forms and the Board's regulations and statutes.

### **III. LEGISLATION AND RULEMAKING**

#### **Legislative History of PERB**

PERB's present involvement in California public sector labor relations can best be seen as a result of an evolutionary legislative process. Highlights are presented herein.

##### The George Brown Act

The George Brown Act of 1960 established a process to determine wage levels for public employees, including State employees. The Act involved the Legislature, the State Personnel Board and non-exclusive employee groups. Each year the State Personnel Board would conduct a study of employee wages and benefits. Using this information, along with input from the employee groups, Legislature and the Governor, a budget item would result reflecting any salary increase for State employees. The Brown Act required the State, as management, to meet and confer with non-exclusive employee organizations to hear their salary requests.

##### The Winton Act

The Winton Act of 1964 withdrew public school and community college employees from the George Brown Act. It granted school employees the right to form, join and participate in the activities of employee organizations and the right to refrain from such activities. It provided for meet and confer but not for exclusive representation. The Winton Act continued plural representation for classified employees and created certificated employee councils for certificated employees. The Winton Act did not provide for an administrative agency. Enforcement of the law was through the courts.

##### Meyers-Milias-Brown Act (MMBA)

The MMBA originally was enacted in 1968 when Senator George Moscone authored SB 1228. SB 1228 was approved by the Legislature on August 1, 1968 as Chapter 1390 of the Statutes of 1968 and was signed by former Governor Ronald Reagan on August 21, 1968. At the time it was written, the law withdrew all employees of local government from the George Brown Act. The MMBA authorized local governments to adopt rules and regulations to provide for administering employer-employee relations. It did not establish exclusive representation by the statute but permitted local government to establish exclusivity through local ordinance. It permitted negotiations of agency shop since 1981. Unfair practice provisions were not in the text of the statute. Local government entities are permitted to adopt reasonable rules establishing election procedures. The MMBA did not exclude management, supervisory or confidential employees.

### Unsuccessful Legislation Leading to EERA

In 1972, Assembly Resolution No. 51 established the Assembly Advisory Council on Public Employee Relations. This blue ribbon panel recommended the enactment of a comprehensive public employment bargaining law for all public employees in California. Several legislative attempts were made to enact this panel's recommendations, each attempt failing to become law.

In 1973, Assembly Speaker Bob Moretti introduced AB 1243, which failed to receive the votes necessary to secure passage. Senator George Moscone introduced SB 400 in 1974, which did not reach the Assembly floor. Senate Bill 1857, authored by Senator Albert Rodda, was debated. Two other unsuccessful efforts were made in 1975, SB 275 (Dills) and AB 119 (Bill Greene and Julian Dixon). Despite these failures, momentum was building which finally led to the enactment of EERA in 1976.

### The Educational Employment Relations Act (EERA)

On January 6, 1975, Senator Albert S. Rodda introduced SB 160, the EERA. Several amendments were made by the author in an attempt to achieve a consensus bill that both employers and employee organizations would support. This measure passed the Legislature on September 8, 1975, and was signed into law as Chapter 961 (Statutes of 1975) by Governor Edmund G. Brown Jr. on September 22, 1975.

The "meet and confer" provision of the Winton Act was strictly limited. Agreements reached under this process could not be incorporated into a written contract, were not binding and could be modified unilaterally by the public school employer.

EERA created the Educational Employment Relations Board (EERB). The EERB was the quasi-judicial agency created to implement, legislate, and settle disputes in, collective negotiations for California's public school employers and employees. The three-member Board assumed its responsibilities in April 1976. The new labor board was given the authority to:

- Determine appropriate bargaining units;
- Conduct representation elections;
- Decide whether or not disputed subjects fall within the scope of representation;
- Appoint fact finders and mediators in impasse situations;
- Investigate and resolve unfair practice charges;
- Bring actions in court to enforce its decisions.

### State Employer-Employee Relations Act (SEERA or Dills Act)

Senate Bill 839, authored by Senator Ralph C. Dills, was passed by the Legislature on September 19, 1977 as Chapter 1159 of the Statutes of 1977. SEERA was signed into law on September 30, 1977 by Governor Brown and became effective July 1, 1978. SEERA extended EERB coverage to State civil service employees. It also renamed EERB as the Public Employment Relations Board (PERB). The powers that had been given to the EERB were conferred on the new PERB.

SEERA contained additional provisions for the exclusive representation by employee organizations, the filing of unfair practice charges and the use of mediation for impasse resolution. SEERA also required the State employer to "meet and confer in good faith." Memoranda of Understandings supersede specified code sections under the provisions of SEERA.

### Higher Education Employer-Employee Relations Act (HEERA)

Assemblyman Howard Berman authored AB 1091, the HEERA, which became law on September 13, 1978. HEERA took effect in July 1979. It covers all employees of the University of California, the California State University and College System, and the Hastings College of Law.

HEERA extends authority similar to that exercised by the Board under EERA and SEERA.

### MMBA Amendments

On July 1, 2001, PERB assumed responsibility for administering the MMBA. Thus, nearly 30 years after it first was suggested that a labor board be created to supervise collective bargaining for all public employees in California, that idea became a reality.

PERB was given jurisdiction over the MMBA through the enactment of SB 739 by Senator Hilda L. Solis. Under the revised MMBA, PERB has jurisdiction over labor relations at all levels of local government except for the City of Los Angeles, the County of Los Angeles and all local police departments.

### Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA)

In 2003, this new statute, authored by Assembly Member Oropeza (AB 199; Chapter 833, Statutes of 2003), was enacted, and its provisions took effect on January 1, 2004. Largely modeled after HEERA, the new law extends PERB's jurisdiction to include the labor relations of the Los Angeles County Metropolitan Transportation Authority (MTA), but only with respect to MTA's supervisory employees.



## **Rulemaking**

On May 14, 2003, PERB announced the development of a regulations package containing changes to PERB's operational procedures and other changes mandated by statutory amendments (enacted in 2001 and 2002) to the MMBA. These proposed regulations were submitted to the Office of Administrative Law, after which a public comment period commenced. During the public comment period, all interested parties were invited to submit written comments regarding the proposed regulations. In addition, a public hearing was held on September 11, 2003, during which oral comments were invited by the Board. After consideration of the oral and written comments, the Board adopted the proposed regulations, as set forth in the Notice of Proposed Rulemaking, on September 11, 2003. The rulemaking package was subsequently approved by the Office of Administrative Law and the amendments were effective December 13, 2003.

On April 8, 2004, at the conclusion of a public hearing on regulation changes proposed in response to the enactment of TEERA, and recent amendments to EERA, HEERA and MMBA, the Board approved a rulemaking package as submitted. The completed file was then submitted to the Office of Administrative Law (OAL) on May 4, 2004. The rule changes became permanent on June 8, 2004, following approval of the package by the OAL and its submission to the Secretary of State for publication. The rule changes at issue were previously enacted, effective February 2, 2004, under emergency rulemaking authority, following approval by the Director of Finance of a request for exception under Executive Order S-2-03.

## **IV. CASE DISPOSITIONS**

### **Unfair Practice Charge Processing**

The 838 unfair practice charges filed in fiscal year 2003-2004 was a 4% increase over the previous fiscal year's filings of 802. This increase continued the overall increase in work since July 2001. The average number of unfair practice charges filed during the ten years prior to July 1, 2001, is 551 per year. The average number of annual filings since July 1, 2001 is 792. This year 152% of the number of charges received during an average year prior to that time were received. The MMBA came under the jurisdiction of PERB July 1, 2001, and is partially responsible for the increase. Additionally, EERA cases, in particular, have also increased since that time. (See chart at page 75.)

General Counsel staff completed investigation of 776 of the 838 unfair practice charges. That is lower than the previous year total of 860 investigations completed. (That includes the 802 filed plus some continuing investigations from the prior fiscal year.) This was due in part to the loss of a regional attorney for most of the year. However, the average number of days to process a charge was 84, less than the average number of days (88) needed in fiscal years 1999-2000 and 2000-2001. The 283 cases that resulted in a complaint comprised 37% of the total number of cases filed which is slightly below the historical 40% average rate of complaint issuance.

### **Dispute Resolutions and Settlements**

As a matter of sound public policy, PERB stresses the importance of voluntary dispute resolution. This emphasis begins with the first step of the unfair practice charge process, the investigation. During this step 493 cases were withdrawn, many through informal resolution by the parties. Staff from the General Counsel's office and the Division of Administrative Law conducted 379 days of settlement conferences, a 8% increase from the 347 days completed the previous fiscal year. These efforts resulted in voluntary settlements in 177 of these cases, or 47%.

PERB's high success rate in mediating voluntary settlements is due to the tremendous skill and efforts of its staff. As the efforts of PERB's staff demonstrate, voluntary settlements are the most efficient way of resolving disputes as well as providing an opportunity for the parties to improve their relationship. PERB looks forward to continuing this commitment to voluntary dispute resolution and extending this commitment to the TEERA parties recently added to its jurisdiction.

### **Administrative Adjudication**

Complaints that are not resolved through voluntary mediation are sent to the Division of Administrative Law for an evidentiary hearing before an administrative law judge. During this fiscal year, the workload of the Division remained relatively consistent with the workload and productivity since the effective date of PERB jurisdiction over the MMBA in January 2001.

ALJ's conducted 127 days of hearing compared to 147 days in 2002-2003 and 132 days in 2001-2002. The ALJs wrote 47 proposed decisions compared to 52 in 2002-2003 and 43 in 2001-2002. It should be noted that in 2002-2003 and 2001-2002 there were six ALJs rather than five. Further, although in recent years ALJs generally do not conduct informal settlement conferences, the two ALJs in Los Angeles conducted 44 of the 379 days of settlement conferences in this fiscal year.

The rate of cases scheduled for hearing that actually went to hearing was 52 percent in the 2003-2004 fiscal year.

### **Board Decisions**

Proposed decisions issued by the Division of Administrative Law are subject to review by the Board itself. During the fiscal year, the Board issued 141 decisions including consideration of 13 requests for injunctive relief. This represents a 62% increase over the 87 decisions issued in 2002-2003.

Although it has been over two years since the addition of the MMBA to PERB's jurisdiction, the process of developing a body of decisional law under the MMBA continues. Because many issues under the MMBA remain unaddressed and unresolved, the Board expects the number of cases filed and appealed to the Board to continue to increase for the next several years.

### **Litigation**

There were a total of 20 litigation cases which were handled during 2003-2004 (summarized in the Appendices, pages 70-74). These litigation cases required the filing of over 45 briefs, motions, and pleadings. This compares with 14 litigation cases during the 2002-2003 fiscal year.

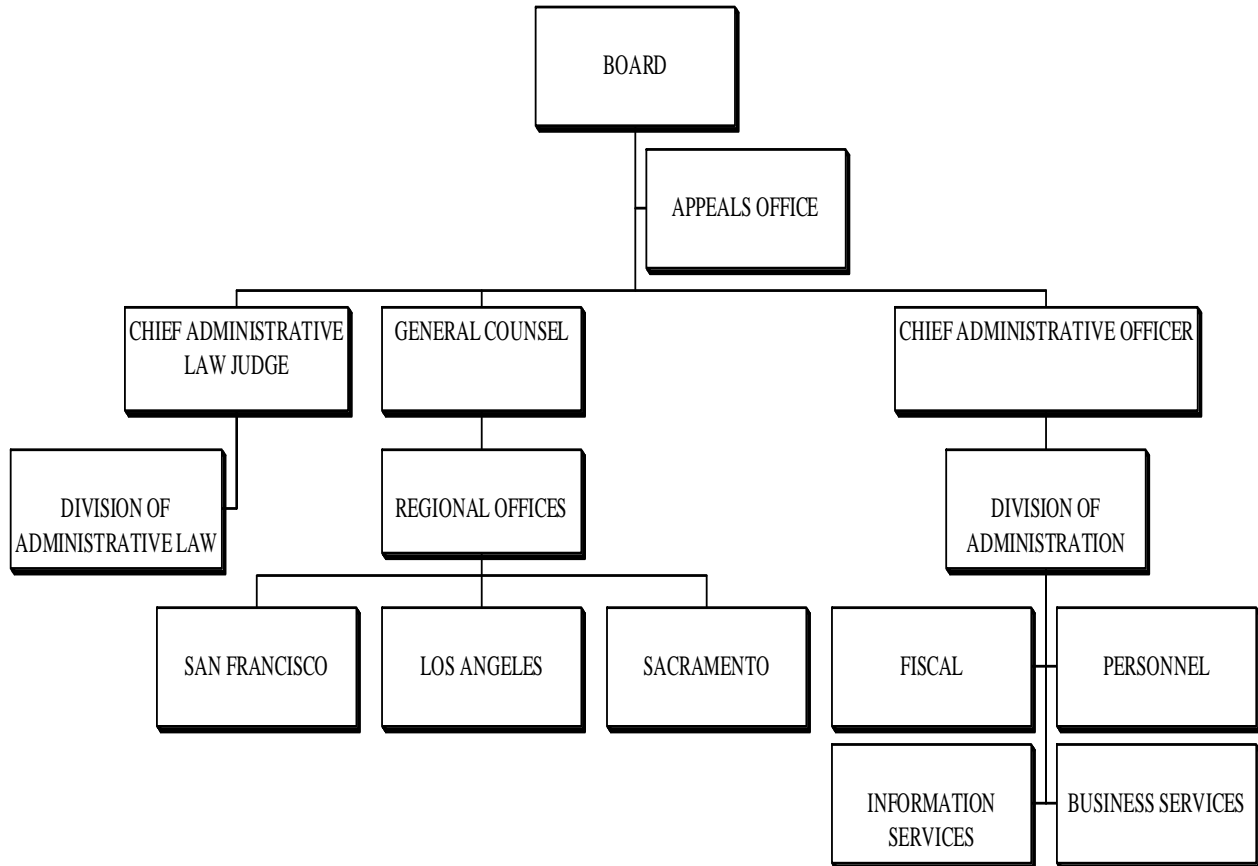
### **Representation Activity**

For the fiscal year, 338 new cases were filed; an increase of 34 over the prior year, but 27 fewer than the preceding 3-year average. The fiscal year total includes 195 mediation and 28 factfinding requests, compliance concerning 27 cases and 82 representation petitions (recognition, severance, certification, decertification, amendment of certification, unit modification, and board review).

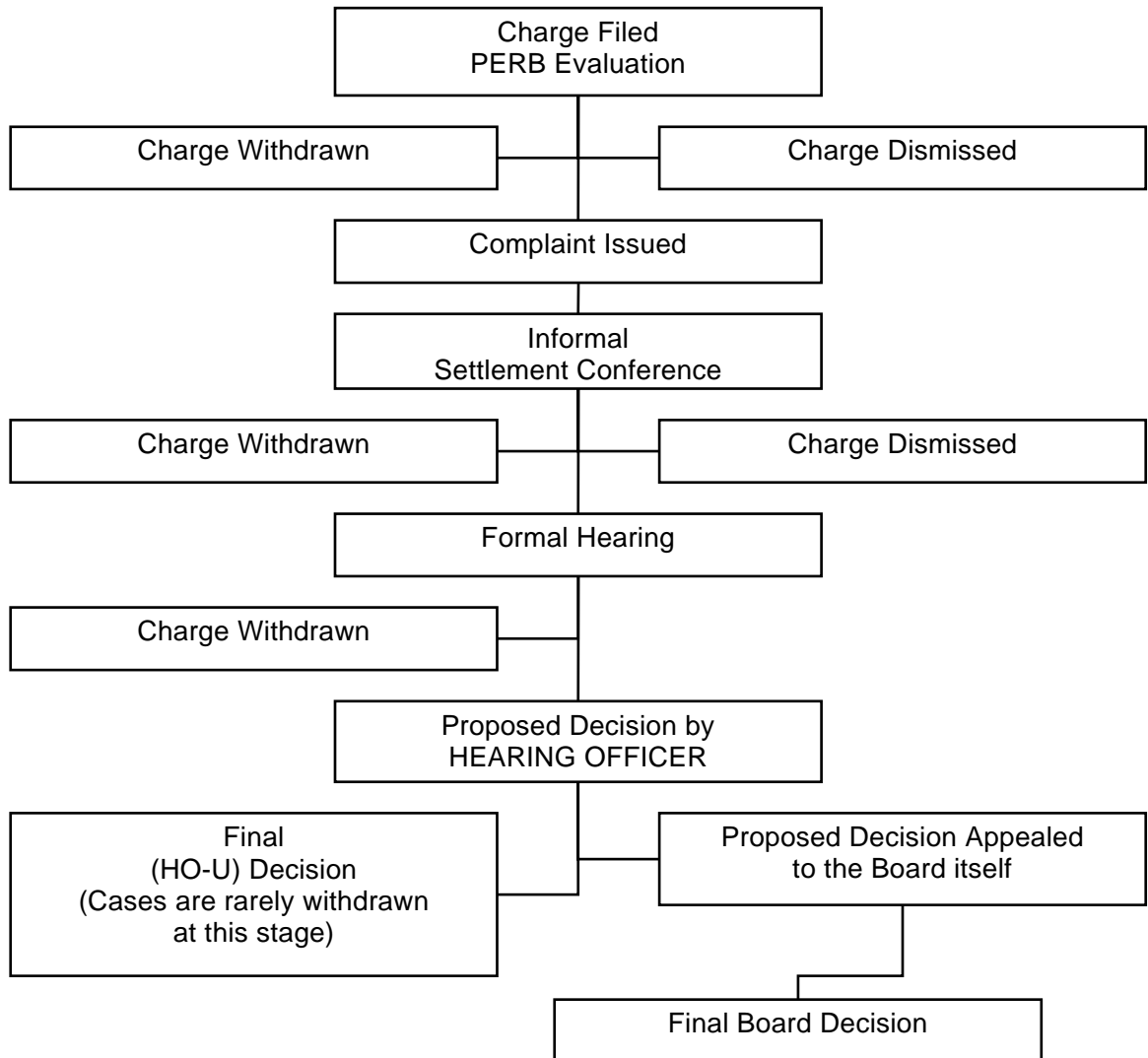
Election activity continued to decline compared to prior years (13 compared to 19 the prior year and 38 per year over the preceding three-year period). There were 6 representation, 5 decertification and 2 unit modification elections.

## **V. APPENDICES**

**PUBLIC EMPLOYMENT RELATIONS BOARD**  
**Organizational Chart**



## UNFAIR PRACTICE CHARGE FLOW CHART



## **2003-2004 REPRESENTATION CASE ACTIVITY**

### **I. Case Filings and Disposition Summary**

<b>Case Type</b>	<b>Filed</b>	<b>Closed</b>
Request for Recognition	23	18
Severance	2	4
Petition for Certification	3	4
Decertification	9	8
Amended Certification	3	2
Unit Modification	42	35
Organizational Security	0	2
Petition for Board Review (MMBA)	3	2
Financial Statement	1	1
Public Notice	1	4
Arbitration	1	1
Mediation	195	255
Factfinding	28	31
Compliance	27	27
<b>Totals</b>	<b>338</b>	<b>364</b>

### **II. Prior Year Workload Comparison: Cases Filed**

	<b>2000-2001</b>	<b>2001-2002</b>	<b>2002-2003</b>	<b>2003-2004</b>	<b>4-Year Average</b>
Fiscal Year	418	373	304	338	358

### **III. Elections Conducted**

Decertification	5
Organizational Security Approval	0
Organizational Security Rescission	0
Representation	6
Severance	0
Unit Modification	2
<b>Total</b>	<b>13</b>

## ***Elections Conducted: 7/1/2003 to 6/30/2004***

<i><b>Case No.</b></i>	<i><b>Employer</b></i>	<i><b>Unit Type</b></i>	<i><b>Winner</b></i>	<i><b>Unit</b></i>
<i><b>Decertification</b></i>		<i><b>Subtotal:</b></i>	<i><b>5</b></i>	
LA-DP-00346-E	SAN DIEGO COMMUNITY COLLEGE DISTRICT	Security	San Diego CC Police Officers Association	41
SA-DP-00208-E	CHAWANAKEE JtUSD	Operations, Support Services	Tie Vote – No winner	27
SA-DP-00208-E	CHAWANAKEE JtUSD	Operations, Support Services	CSEA & its Chapter 51	27
SF-DP-00256-H	UNIVERSITY OF CALIFORNIA	UC San Diego Skilled Crafts	SETC-UNITED	163
SF-DP-00257-E	BENICIA USD	Operations, Support Services	CSEA Benicia Chapter 753	28
<i><b>Representation</b></i>		<i><b>Subtotal:</b></i>	<i><b>6</b></i>	
LA-RR-01081-E	SANTA CLARITA CCD	Certificated Part-Time	Part-Time Faculty United	452
LA-RR-01098-E	LONG BEACH UNIFIED SCHOOL DISTRICT	Classified Supervisors	No Representation	357
LA-RR-01101-E	VICTOR VALLEY CCD	Certificated Part-Time	Part-Time Faculty United AFT	418
SA-RR-01053-E	TURLOCK USD	Wall Certificated	Turlock TA	720
SF-PC-01054-H	UNIVERSITY OF CALIFORNIA	Hospital-Based Administrative Professionals	No Representation	1050
SF-PC-01054-H	UNIVERSITY OF CALIFORNIA	Administrative Professionals	No Representation	11120
<i><b>Unit Modification</b></i>		<i><b>Subtotal:</b></i>	<i><b>2</b></i>	
SA-UM-00729-E	MERCED CITY ESD	Pupil Personnel	Merced City Teachers Association	6
SA-UM-00734-E	VISALIA USD	Adult School	Visalia Unified TA	28
<i><b>Total</b></i>		13		



## 2003-2004 UNFAIR PRACTICE CHARGE STATISTICS

### I. Unfair Practice Charges Filed by Office

	<b>1<sup>st</sup> Half</b>	<b>2<sup>nd</sup> Half</b>	<b>Total</b>
Sacramento	136	107	243
San Francisco	123	152	275
Los Angeles	<u>164</u>	<u>156</u>	<u>320</u>
<b>Total</b>	423	415	838

### II. Unfair Practice Charge Dispositions by Office

	<b>Charge Withdrawal</b>	<b>Charge Dismissed</b>	<b>Complaint Issued</b>	<b>Total</b>
Sacramento	82	51	86	219
San Francisco	69	92	60	221
Los Angeles	<u>107</u>	<u>92</u>	<u>137</u>	<u>330</u>
<b>Total</b>	258	235	283	776

### III. Prior Year Workload Comparison: Charges Filed

	<b>2000/2001</b>	<b>2001/2002</b>	<b>2002/2003</b>	<b>2003/2004</b>	<b>4-Year Average</b>
1 <sup>st</sup> Half	211	521	433	423	397
2 <sup>nd</sup> Half	<u>250</u>	<u>414</u>	<u>369</u>	<u>415</u>	362
<b>Total</b>	461	935 <sup>1</sup>	802	838	759

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<sup>1</sup> The reported number of filings (935) in 2001-2002 included two mass filings of the same charges by 195 individual employees.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1490a	Turlock Teachers Association v. Turlock Joint Elementary School District	Supreme Court declined to review opinion of Court of Appeal, but ordered the opinion de-published. Pursuant to the court of appeal's order, Board dismissed charge and complaint alleging that District violated EERA by prohibiting the wearing of union buttons.	Board dismissed charge and complaint.
1540a-S	Jesse Vickers v. State of California (Department of Corrections)	Vickers moved to excuse a late-filed second-amended charge and requested reconsideration of the Board's dismissal and deferral of his charge to arbitration in 1540.	The second amended charge was several months late. Vickers did not provide any facts to show good cause to excuse the late filing. The Board granted his request for reconsideration because his union was unable to arbitrate his grievance under the CBA. The charge was remanded to the GC's office for further investigation.
1543	Part-Time Faculty United, AFT v. Victor Valley Community College District	Rival union alleged that community college district unlawfully demonstrated preference to an incumbent union representing 140 full-time faculty by allowing it to accrete 350 part-time faculty members into the unit, while the district was aware that rival union had already begun organizing the part-time faculty.	Board found that district violated EERA.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1544	United Administrators of Oakland Schools v. Oakland Unified School District	Union alleged unlawful unilateral change. Board found that union failed to allege with specificity any facts showing that the District changed its existing actual practice.	Board dismissed charge.
1545-M	Stationary Engineers Local 39, International Union of Operating Engineers, AFL-CIO v. Diablo Water District	Union alleged that employer unilaterally implemented dress code and dual employment policies. Board found that union waived right to bargain.	Board dismissed charge.
1546-S	Williams F. Horspool v. State of California (Department of Corrections)	Charging party's appeal of partial dismissal improperly sought to amend complaint.	Board affirmed partial dismissal of charge.
1547	Ventura County Federation of College Teachers, Local 1828, AFL-CIO v. Ventura County Community College District	Union alleged that community college district unlawfully transferred bargaining unit work by entering into an agreement to allow sheriff's employees to teach criminal justices for students who would receive college credit. Board analyzed the agreement as akin to a transfer of work and found that the decision to utilize sheriff's employees as instructors was within the scope of representation.	Board found that the district violated EERA.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1548	Angels Camp Educators Association, CTA/NEA	Union alleged that district unilaterally increased the hours of work for teachers. Exceptions filed only on remedy ordered. Board found the appropriate remedy is compensatory time off, with possible backpay.	Board modified remedy to include possibility of backpay along with compensatory time off.
1549	California School Employees Association & Its Chapter 147 v. Banning Unified School District	Union appealed dismissal of unfair practice charge. Board found that union demonstrated good cause for late-filed amended charge.	Board reversed dismissal and remanded for further proceedings.
1550	Rita Ann Simpson v. California School Employees Association & Its Chapter 130	Charge alleged that union violated duty of fair representation. Board found that such duty does not apply in proceedings where union does not provide exclusive representation.	Board dismissed charge.
1551-S	John Douglas Barker & David Osuna v. California State Employees Association	Barker and Osuna alleged discrimination by CSEA for its removal of them as bargaining representatives in negotiations with the State.	The Board dismissed the charge not finding nexus between their protected conduct and CSEA's actions. The Board also distinguished this case from 1479 and 1479a in that Barker and Osuna were not removed from membership in CSEA.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1552	Lawanda Bailey v. Los Angeles Unified School District	Bailey alleged discrimination by the District. She claims a hostile work environment forced her to transfer to a lower paying job due to her complaints about her supervisor.	The Board did not accept Bailey's amended charge because it contained procedural defects: was untimely and not served on the District. The Board found that Bailey's complaints to her supervisor about a subordinate were not protected conduct. The Board found that the complaints were not specifically described. The complaint appeared to be undertaken on her own behalf, as opposed to bringing an issue concerning employees generally, a factor which would confer protected status.
1553-S	Paula Sutton v. California State Employees Association, Local 1000, SEIU, AFL-CIO, CLC	Charge alleged the union violated duty of fair representation. Board found charge untimely.	Board dismissed charge.
1554	Joyce Singer Abrams v. Chula Vista Elementary Educators Association	Charge alleged the union violated duty of fair representation. Board found that charge failed to establish prima facie case.	Board dismissed charge.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1555	American Federation of State, County & Municipal Employees, Local Union No. 101	Charge alleged that union activist was laid off because of protected activities. Board found that charge established prima facie case of discrimination.	Board reversed dismissal and remanded case for issuance of complaint.
1556	Ravenswood Teachers Association, CTA/NEA v. Ravenswood City Elementary School District	RTA requested that the Board withdraw its unfair practice charge with prejudice pursuant to a settlement agreement.	The Board found withdrawal of the charge to be in the parties' best interests and granted the request.
1557	Maura Hogan Larkins v. Chula Vista Elementary School District	Charge alleged that employer discriminated against charging party for protected activities. Board found charge failed to establish prima facie case.	Board dismissed charge.
1557a	Maura Hogan Larkins v. Chula Vista Elementary School District	Charging party sought reconsideration of Dec. 1557. Board denied request.	Board denied request for reconsideration.
1558	California State Employees Association v. State of California (Department of Motor Vehicles	Union alleged that State violated Dills Act by using existing security system as timekeeping device. Board found that change was not within scope of representation.	Board dismissed charge.

## 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1559	Jesse Vickers v. State of California (Department of Corrections)	Vickers alleged various violations of the MOU and local agreement between CCPOA and the State involving his work unit. Vickers also requested information from Corrections in July 2002.	The Board found that four allegations regarding changed conditions were untimely. With regard to the information request, if Vickers was requesting information about known old grievances, the request is untimely. If Vickers claims the refusal to provide the request is the violation, then it is timely. However, in this case, the Board found he did not state a prima facie case because the State's duty to provide information is owed to the exclusive representative, not to individual employees.
1559a-S	Jesse Vickers v. State of California (Department of Corrections)	Vickers requested reconsideration of 1559. He stated the Board should litigate the untimely allegations. He claimed that the Board overlooked information provided in his charge in rendering the decision.	The Board denied the request for reconsideration. The request did not delineate the issues that Vickers thought were in error and thus did not meet the limited grounds for reconsideration.
1560	Ernest W. Maurer v. Coast Community College District	Union alleged that district violated EERA by discriminating against instructor for protected activities. Board adopted proposed decision dismissing charge and complaint.	Board dismissed charge and complaint.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1561	Bellevue Educators Association, CTA/NEA v. Bellevue Union Elementary School District	Union alleged that district violated EERA by discriminating against two teachers for protected activities. Board declined to adopt proposed decision. Board found that district would have terminated teachers even absent protected activities.	Board dismissed charge and complaint.
1562-S	California Union of Safety Employees v. State of California (Department of Parks & Recreation)	Union alleged that State violated Dills Act by unilaterally implementing a new aquatic safety policy. Board found that charge should be deferred to arbitration.	Board dismissed charge and deferred matter to arbitration.
1563-M	AFSCME Local 512, AFL-CIO v. City of Pittsburg	Union alleged that city violated MMBA by employing consultant to review and recommend actions in response to union grievances. Board found no change in policy.	Board dismissed charge.
1564	Long Beach Council of Classified Employees v. Long Beach Community College District	Board held that six-month statute of limitations under EERA is not jurisdictional; overruling <u>California State University, San Diego</u> (1989) PERB Decision No. 718-H. Board then reinstated the doctrine of equitable tolling and applied it to the facts.	Board reversed dismissal and remanded case for further investigation and processing.



### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1565-M	Fresno Irrigation District Employees Association v. Fresno Irrigation District	Union alleged that district violated MMBA by refusing to allow use of meeting room for union meeting. Board found that district violated its own local rules.	Board found that the district violated MMBA.
1566-S	California Union of Safety Employees v. State of California (Department of Parks & Recreation)	CAUSE alleged that the State used a non-unit employee/supervisor to perform bargaining unit work without prior notice or opportunity to negotiate. The State waived procedural defenses. The Board agent dismissed and deferred the charge to arbitration.	The Board affirmed the Board agent's dismissal and deferral. The Board found that CAUSE waived the right to negotiate removal of unit work via the MOU zipper clause. CAUSE further argued that the case should not be deferred because it alleged derivative claims not covered by the MOU. The Board found that NLRB and Board precedent require that where the employer's conduct is arguably prohibited by the MOU, the Board must defer all legal theories that derive from that conduct.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1567-S	California Union of Safety Employees v. State of California (Department of Mental Health)	CAUSE alleged that the State eliminated the Hospital Police Dept.'s job to transport and escort forensic Penal Code patients on Metropolitan State Hospital grounds. The State waived procedural defenses and the Board agent dismissed and deferred this case to arbitration.	The Board affirmed the Board agent's dismissal and deferral. The Board found that CAUSE waived the right to negotiate removal of unit work via the MOU zipper clause. CAUSE further argued that the case should not be deferred because it alleged derivative claims not covered by the MOU. The Board found that NLRB and Board precedent require that where the employer's conduct is arguably prohibited by the MOU, the Board must defer all legal theories that derive from that conduct.
1568	Long Beach Community College District Police Officers Association v. Long Beach Community College District	Union alleged that district violated EERA by subcontracting out all unit work. Board held that contract language giving management right to "contract out work," when read in context did not constitute a clear and unmistakable waiver without extrinsic evidence; <u>Barstow Unified School District</u> (1996) PERB Decision No. 1138 is overruled.	Board reversed dismissal and remanded case for issuance of complaint.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1569	John Rossmann, et al. v. Orange Unified Education Association & California Teachers Association	Charge alleged that union violated duty of fair representation by entering agreement with employer that allegedly discriminated against retirees. Board found charge failed to establish prima facie case.	Board dismissed charge.
1570-M	Service Employees International Union, Local 790 v. County of San Joaquin	Union alleged that county violated MMBA by refusing to participate in impasse procedures under local rules. Board found that language of local rule was ambiguous.	Board reversed dismissal and remanded case for further processing.
1571	Diane M. Kaiser v. Fremont Unified School District	Charge alleged that district discriminated against teacher because of her protected activities. Board affirmed dismissal.	Board dismissed charge.
1572	Diane M. Kaiser v. Fremont Unified District Teachers Association	Charge alleged that union violated duty of fair representation. Board affirmed dismissal.	Board dismissed charge.
1573-H	Robert J. O'Malley v. American Arbitration Association	Charging party alleged that American Arbitration Association violated HEERA by conducting unfair and irregular agency fee hearing process. Board found that AAA was not covered by HEERA.	Board dismissed charge.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1574-S	California Union of Safety Employees v. State of California (California Highway Patrol)	Union alleged that State violated Dills Act by denying union representation to employee. Subsequently, union requested to withdraw charge.	Board granted request to withdraw charge.
1575	Maura Hogan Larkins v. Chula Vista Elementary Educators Association	Charge alleged that union violated duty of fair representation. Board affirmed dismissal.	Board dismissed charge.
1575a	Maura Hogan Larkins v. Chula Vista Elementary Education Association	Charging party sought reconsideration of Dec. 1575. Board denied request.	Board denied request for reconsideration.
1576	Timothy Edward Lee v. Peralta Community College District	Lee alleged that the District failed to comply with an arbitrator's award to reinstate him as a permanent employee, in part by refusing to consult with him and with his union, to withhold vacation pay, sick leave and longevity pay from him, and to hire student employees in violation of the CBA.	The Board found that Lee failed to provide specifics regarding the District's alleged withholding of various benefits. The Board further found that Lee lacked standing to allege failure to consult or unilateral change, since the employer's duty in those matters is owed to the exclusive representative and not to individual employees. Lee alleged new facts on appeal but the Board did not find good cause to accept them.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1577-M	Service Employees International Union v. County of Riverside	SEIU alleged that the County refused to process the grievance of a unit member.	Using a “per se” test, the Board found that the County unilaterally changed the grievance procedure by not processing the grievance and that the County’s conduct had a generalized effect and continuing impact on terms and conditions of employment. The Board also found that SEIU did not waive its right to grieve promotions because the right to promote is constrained by the CBA.
1577a-M	Service Employees International Union v. County of Riverside	The County requested reconsideration on the basis of a prejudicial error of fact in that no past practice existed on the issue of grieving promotions. The County stated that newly discovered evidence, the retirement of the grieving employee, rendered the case moot.	The Board stated that the County misconstrued 1577 in that instead, the Board found that the County was contractually bound to grieve promotions. The Board found that the employee’s retirement did not render the case moot because the right to grieve promotions in general was still at issue. The Board thus denied the request for reconsideration.

## 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1578-H	Robert J. O'Malley v. California Nurses Association	O'Malley, a nonmember but part of the bargaining unit, claimed that CNA failed to provide him with financial records at his request. He stated that this violates the agency fee regulations and so is an unfair practice.	The Board determined this is a separate requirement from those involving agency fees. The only remedy for failure to make available financial reports is a petition to compel compliance and therefore O'Malley did not state a prima facie violation of HEERA. The case is moot since CNA ultimately provided the reports.
1579-S	Julia R. Zanchi v. State of California (Department of Corrections	Charge alleged that State discriminated against charging party because she filed a grievance. Board found that charge alleged sufficient facts to establish required nexus.	Board reversed dismissal and remanded case for issuance of complaint.
1580-M	Oxnard Harbor District v. SEIU Local 998	Charge alleged that union violated MMBA by engaging in a sympathy strike. Board found that there is no common law prohibition on strikes. Thus, a sympathy strike only constitutes an unlawful unilateral change if prohibited by a collective bargaining agreement. Board found that agreement did not expressly prohibit sympathy strikes.	Board dismissed charge.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1581-M	Sacramento County Aircraft Rescue Firefighters Association v. County of Sacramento	Charge alleged that county violated its own local rules by entering into 5-year contract. Board held that by agreeing to a contract longer than allowed, no contract bar protection exists for any period of time.	Board found that the county violated MMBA.
1582-H	Rodney N. Trout v. University Professional & Technical Employees, CWA Local 9119	Trout, an agency fee payer, alleged that UPTE failed to make its financial report available within the 60 day deadline. UPTE requested that the Board accept its late-filed response to Trout's appeal.	Under HEERA section 3587 and PERB Reg. 32125, only members of the employee organization may petition to compel compliance for provision of financial reports. Therefore, Trout lacks a remedy to compel provision of UPTE's financial records. These records must be distinguished from the annual notice for agency fees and the rights of nonmembers to certain information under PERB regulations.
1583-S	Jim Hard, Cathy Hackett & Larry Perkins v. California State Employees Association	CSEA requested to withdraw its exceptions to the ALJ's proposed decision.	The Board found the request to be in the parties' best interests and granted the request.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1584-H	California State Employees Association v. Trustees of the California State University (San Marcos)	Charge alleged that university violated HEERA by unilaterally increasing students fees which affected university employees enrolled in university courses. Board held that general fee increase applicable to all students is not within the scope of representation. However, the waiver or reduction of such fees is within scope.	Board dismissed charge and complaint.
1585-H	George Sarka v. Regents of the University of California	Charge alleged that university discriminated against charging party because of protected activities. Board found charge to be timely, but held that no prima facie case was established.	Board dismissed charge.
1585a-H	George Sarka v. Regents of the University of California	Request for Reconsideration consisted only of the argument raised on appeal.	Reconsideration denied. Request must include grounds set forth in PERB Regulation 32410.
1586-H	Academic Professionals of California v. Trustees of the California State University	Charge alleged that university violated HEERA by unilaterally increasing students fees which affected university employees enrolled in university courses. Based on Dec. 1584-H, Board dismissed charge.	Board dismissed charge.



## 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1587-H	Academic Professionals of California v. Trustees of the California State University	Charge alleged that university violated HEERA by unilaterally increasing students fees which affected university employees enrolled in university courses. Based on Dec. 1584-H, Board dismissed charge.	Board dismissed charge.
1588-H	California Faculty Association v. Trustees of the California State University	Charge alleged that university violated HEERA by unilaterally increasing students fees which affected university employees enrolled in university courses. Based on Dec. 1584-H, Board dismissed charge.	Board dismissed charge.
1589	Daniel H. Andrus; Eugene James Miller, III, et al.; John C. Mettier; Clark A. Kerr; Brian Thomas Kerr v. Paso Robles Public Educators	Charge alleged that union violated EERA by collecting agency fees prior to issuance of a Hudson notice. Board rejected proposed decision. Board found that union failed to issue proper Hudson notice before collecting fees.	Board found that union violated EERA.

## 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1590-H	American Federation of State, County & Municipal Employees v. Regents of the University of California (Davis)	UC's blood gas lab became short-staffed and UC promised the remaining employees extra shift pay to work additional shifts. The unlicensed lab technicians worked extra shifts but did not get the extra pay. The technicians wrote that they would not work extra shifts until they received the extra pay. UC responded by saying the positions now required a license. UC later laid off the lab technicians.	The Board agent found the charge untimely because the notice of the licensing requirement occurred more than 6 months before the charge. Citing 1585, the Board found that in discrimination cases, the date of the actual termination, not the date of notice of termination, is the triggering date. The Board found the charge timely. The Board also found that AFSCME stated a prima facie case of discrimination and remanded the charge for issuance of a complaint. A supervisor had stated the layoffs were caused by the employee complaints. When there is direct evidence of unlawful intent, it is unnecessary to determine the existence of circumstantial evidence.
1591-H	California Faculty Association v. Trustees of the California State University	Charge alleged that university failed to provide necessary and relevant information to union. Board rejected university assertion of privilege based upon Public Records Act.	Board found that university violated HEERA.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1592-H	George Sarka & Kenneth Malkes v. Regents of the University of California	Charge alleged that university discriminated against charging parties because of protected activities. Board found that charge failed to provide clear and concise statement of facts, and that charge failed to establish prima facie case.	Board dismissed charge.
1593-S	Reggie Toran v. California State Employees Association	Charge alleged that union violated duty of fair representation. Board found that charge was untimely.	Board dismissed charge.
1594	Linda Lou Kestin v. United Teachers of Los Angeles	Charge alleged that union violated duty of fair representation. Board dismissed charge for failure to provide clear and concise statement of facts.	Board dismissed charge.
1595	Newark Teachers Association v. Newark Unified School District	Charge alleged that arbitration decision was repugnant to EERA. Board adopted proposed decision finding that arbitrator's decision was not unreasonably or repugnant to purposes of EERA.	Board dismissed charge and complaint.
1596-H	Regents of the University of California v. Associate of Graduate Student Employees, United Auto Workers	University alleged that union engaged in an unlawful pre-impasse sympathy strike. After appeal filed, university requested to withdraw charge.	Board granted request to withdraw charge.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1597-H	California Faculty Association v. Trustees of the California State University	Charge alleged that university demanded payment prior to providing necessary and relevant information to union. Board found that university reasonably relied on union's commitment to pay for information and that union could not renege on agreement.	Board dismissed that portion of the charge and complaint at issue in exceptions. Board sustained violation of HEERA on remainder of complaint.
1598-M	SEIU, Local 1280, AFL-CIO v. County of Solano (Human Resources Department)	SEIU alleges the County discriminated against more senior employees by failing to place them at a higher promotional step but gave younger employees a step increase.	The Board agent dismissed the charge for failure to state a prima facie case. The Board found that the appeal did not meet the specificity requirements of PERB Reg. 32635. Several months later, some employees filed an informal petition to submit an informational brief. The petitioners did not show good cause for the delay in filing and so the petition was not addressed. The Board upheld the Board agent's dismissal.
1599-H	California State Employees Association v. Trustees of the California State University (San Luis Obispo)	Charge alleged that university violated HEERA by unilaterally increasing students fees which affected university employees enrolled in university courses. After appeal filed, union requested to withdraw charge.	Board granted request to withdraw charge.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1600-M	SEIU Local 790 v. County of San Joaquin	The charge alleged that the County refused to adopt a mediator's recommendation without explanation to SEIU. SEIU claimed violations of MMBA and local rules.	The Board found there was no evidence that the recommendation was ever brought before the County's board and so affirmed the dismissal. On appeal, SEIU alleged that the County refused to provide information regarding holiday pay to SEIU. The Board stated that SEIU may not raise a new allegation without good cause. The Board found no facts to support good cause. SEIU argued on appeal that public policy supports mediation but cited only cases in which agreements call for binding arbitration. The Board was not persuaded by this argument to find a violation of MMBA.
1601-S	State of California (Department of Personnel Administration) v. California State Employees Association, SEIU Local 1000	State alleged that union violated Dills Act by unilaterally changing its practice for authorizing its member to be on union leave. Board adopted proposed decision finding that union violated Dills Act.	Board found that union violated Dills Act.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1602	San Bernardino Association of Substitute Teachers v. San Bernardino City United School District	Union alleged that district violated EERA by discriminating against two teachers for protected activities. Board rejected proposed decision. Board found that teachers would have been removed from eligibility list even absent protected activities.	Board dismissed charge and complaint.
1603	Daniel Wayne Sloan v. Shasta College Faculty Association	Charge alleged that union violated duty of fair representation. Board found that duty of fair representation did not attach under the facts.	Board dismissed charge.
1604	Lorraine Holford v. United Teachers of Richmond	Charge alleged that union violated duty of fair representation by failing to arbitrate grievance. Board found that charge failed to establish prima facie case.	Board dismissed charge.
1605	Las Virgenes Educators Association v. Las Virgenes Unified School District	Union alleged that district discriminated against teacher for protected activities. Board found that teacher would have been disciplined even absent protected activities.	Board dismissed charge and complaint.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1606	Elvina G. Gutierrez v. California School Employees Association & Its Chapter 244	Gutierrez alleged that CSEA breached the duty of fair representation with regard to alleged sexual advances, change of work schedule, decreased pay and longevity pay, and slander by the District's Director.	The Board found that all items other than the pay issues were untimely. For the pay issues, CSEA investigated the pay issues and found that the District had properly paid Gutierrez. Disagreement with CSEA on this issue does not state a prima facie case. The appeal lacked the specificity required by PERB regulations.
1607	Robert J. O'Malley v. California Nurses Association	O'Malley claimed that CNA unilaterally returned agency fees collected from O'Malley and failed to follow the agency fee appeal procedure. During the appeal procedure, the arbitrator ruled that O'Malley lacked standing to participate since the fees were refunded.	The Board found that O'Malley did not allege sufficient facts to show the arbitration proceedings to be unfair and procedurally defective. The arbitrator's decision was not repugnant because it was not palpably wrong. The Board agreed that O'Malley lacked a remedy because the fees were returned. CNA did not violate the agency fee regulations since they presume possession of the fees.
1608-M	Service Employees International Union, Local 790, AFL, CIO v. City & County of San Francisco	Union alleged that city violated MMBA by unilaterally assigning new duties to clerks. Board found that new duties were reasonably related to existing duties; thus, assignment of new duties is not mandatory subject of bargaining.	Board dismissed charge.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1609-H	Maurice Webb v. Trustees of the California State University (San Bernardino)	The Board affirmed dismissal of unfair practice. Webb alleged University retaliated against him for filing a grievance by denying a grievance hearing but there was no clear and concise statement of facts or the conduct alleged to constitute the unfair practice.	Charging Party must provide a clear and concise statement of facts. A charge that does not clearly state what type of unfair practice violation is alleged is not sufficient. The burden is on the charging party to provide a clear and concise statement of relevant facts.
1609a-H	Maurice Webb v. Trustees of the California State University (San Bernardino)	Request for reconsideration requested review of evidence already reviewed in the underlying case and requested inappropriate remedies.	Reconsideration denied. Request must include grounds set forth in PERB Regulation 32410.
1610-M	Cassandra Stewart (Mental Health Workers) v. Service Employees International Union Local 250	Charge alleged that union violated duty of fair representation by negotiating agreement that did not benefit charging party. Board found that mere fact that some bargaining unit members are not satisfied with a collective bargaining agreement is insufficient by itself to demonstrate a prima facie violation.	Board dismissed charge.
1611-M	San Francisco Firefighters Union, Local 798, IAFF, AFL-CIO v. County of San Francisco	Union alleged that city violated MMBA by unilaterally changing the discipline imposed for first-time violations. Board found that charge failed to establish change in policy or practice.	Board dismissed charge.



### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1612	Marilee DeLauer v. Santa Rosa Junior College	Charge alleged that college discriminated against charging party for protected activities. Board found charge to be untimely.	Board dismissed charge.
1613	Marilee DeLauer v. Sonoma Valley Unified School District	Charge alleged that college discriminated against charging party for protected activities. Board found that charge was untimely and failed to establish prima facie case.	Board dismissed charge.
1614-S	California Union of Safety Employees v. State of California (Department of Developmental Services)	Union alleged that State violated Dills Act by transferring work from one bargaining unit to another. Board found that duties were overlapping.	Board dismissed charge.
1615-H	Security Police Officers Association v. Regents of the University of California (Lawrence Livermore National Laboratory)	Charge alleged that State unlawfully transferred work from one bargaining unit to another. Board found that duties at issue were overlapping between the units; thus, decision to transfer work not negotiable.	Board dismissed charge.

## 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1616	San Juan Teachers Association, CTA/NEA v. San Juan Unified School District	The Association alleged the District, without according the Association prior notice or opportunity to bargain, unilaterally eliminated voluntary shared contract positions without obtaining the consent of the shared contract teachers.	The Board found that the Association did not provide specific information showing a past practice. The CBA provisions pertaining to shared contract positions apply to the pre-retirement work program. The shared contract positions at issue were voluntary and not part of that program. The only CBA provision concerning the voluntary program involved the establishment of a committee to set guidelines for the voluntary program.
1617-S	Donald Wayne Kunkel v. State of California	Charge alleged that State discriminated against charging party because of protected activities. Board dismissed charge for failure to establish protected activity and nexus.	Board dismissed charge.
1618-M	Mark Siroky v. International Union of Operating Engineers, Local 39	Charge alleged that union violated duty of fair representation by failing to enforce settlement agreement. Board found that charge demonstrated rational basis for union's actions; charging party failed to establish otherwise.	Board dismissed charge.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1619-S	Moses M. Sarinana v. State of California (Department of Forestry & Fire Protection)	Charge alleged that State discriminated against charging party for protected activities. Board found charge to be untimely.	Board dismissed charge.
1620-M	Judith D. Kimbrough v. Alameda County Medical Center	Kimbrough alleged that the Medical Center violated the MMBA by refusing to process her grievance through arbitration and otherwise hear her grievance beyond the third level.	The Board held that Kimbrough lacked standing to assert a violation of rights accorded to the exclusive representative. MMBA section 3503 does not confer this right, rather, it merely refers to the employee's ability to meet with the employer without the employee organization. The Board also found that Kimbrough did not show good cause to raise new allegations on appeal since these allegations were known to her during the time her charge was being processed.
1620a-M	Judith D. Kimbrough v. Alameda County Medical Center	Kimbrough requested reconsideration for 1620.	The Board found that Kimbrough's request failed to meet either grounds for reconsideration and so denied the request.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1621-M	Demont Yusuf Waqia v. International Association of Firefighters Local 55	Waqia claimed that Local 55 breached the duty of fair representation by failing to take his grievance regarding his termination from employment.	The Board found that Local 55's refusal to arbitrate his grievance was not arbitrary, discriminatory or in bad faith. Waqia did not pursue the grievance or notify Local 55 of his termination in a timely manner. Local 55's attorney analyzed the chances of success in arbitration at less than 50% because under the CBA, failure to meet the deadlines nullifies the grievance. Local 55 believed that an arbitrator would dismiss the grievance based upon this procedural defect and not address the merits. An exclusive representative has no obligation to pursue a grievance where the chance of success of arbitration is doubtful.
1621a-M	Delmont Yusuf Waqia v. International Association of Firefighters Local 55	Waqia requested reconsideration of 1621.	The Board found that Waqia failed to meet the limited grounds for reconsideration and denied the request.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1622-M	Operating Engineers Local 3 v. Westlands Water District	Union alleged that district violated MMBA by accepting unit modification petition from rival organization within one year of a representational election. Board found that union established prima facie violation. Complaint ordered issued.	Board reversed dismissal and remanded for issuance of complaint.
1623	Fontana Unified School District and United Steel Workers of America	USWA sought to add all duty aides to a wall-to-wall classified unit. USWA provided proof of majority support. The District opposed the petition.	The Board determined that the duty aides shared sufficient community of interest with the classified unit to warrant their inclusion in the unit and granted the petition.

## 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1624	Sallie Stryker v. Antelope Valley College Federation of Teachers	Stryker alleged that the Federation retaliated against her and interfered with her rights by removing her from the negotiating team because of a personal conflict with the Federation's chief negotiator. She alleged that her removal interfered with her ability to meet and confer with the employer. Much of her claim was focused upon race-based discrimination. Stryker further alleged that she was filing the charge not only as a Federation member but as a Federation employee since she had received payment for participating on the negotiating team.	The Board explained that EERA does not protect against race-based discrimination and so the Board lacks authority to decide these issues. With regard to her claim of interference by her removal from the negotiating team, the Board held that 1551 is determinative, finding that removal from the bargaining team is an internal union matter. The Board is reluctant to interject its authority in such matters. Removal from the negotiation team is different from removal from membership. The Board finally held that Stryker lacked standing to assert the right to meet and confer with the employer as that right is reserved to employee organizations. There were no specific facts showing that the remainder of the team was unable to represent adjunct professors without her participation. The Board lacks authority to adjudicate claims against the employee organization in its role as employer since it is not a public school employer under EERA.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1625-M	International Union of Operating Engineers, Local 3 v. McCloud Community Services District	Union alleged that district violated MMBA by refusing to bargain. After appeal filed, union requested to withdraw charge.	Board granted request to withdraw charge.
1626-H	Corneliu Sarca v. California State Employees Association, CSU Division	Charge alleged that agency fee arbitration decision was repugnant because arbitrator allowed the improper calculation of agency fees. Board found arbitration decision reasonable and dismissed charge.	Board dismissed charge.
1627	San Joaquin County Office of Education and California School Employees Association	Request for unit determination to include five classifications of employees found appropriate based on community of interest.	Unit determination found appropriate based on community of interest that included supervision under directors of department, qualifications, education and experience.
1628-M	Jeffrey F. Brady v. City of Santa Barbara	Charge alleged that city violated MMBA by denying charging party a representative during an investigative interview. Board found that charge failed to establish a prima facie case.	Board dismissed charge.
1629	California School Employees Association & its Chapter 209 v. Yucaipa-Calimesa Joint Unified School District	Union alleged that district violated EERA by unilaterally implementing a new program for custodians. After appeal filed, union requested to withdraw charge.	Board granted request to withdraw charge.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1630-M	International Union of Operating Engineers, Local 39, AFL/CIO v. County of Placer	County employees filed charge alleging unfair practice. County Civil Service Commission Rule required filing within 60 days of alleged violation. Union appealed ALJ dismissal.	Charge dismissed. Board found charge untimely. No violation of MMBA because original complaint filed with county was untimely.
1631	Annette Deglow v. Los Rios Community College District	Charges filed under EERA section 3541.(a) (1) more than six months after dates of alleged violations.	Charges dismissed as untimely. Under EERA 3541.(a)(1) charges untimely when filed more than six months from date party knew or should have known of conduct giving rise to claim of retaliatory reaction to protected activity.
1632-M	John Adza v. Service Employees International Union #790	Charge alleged that union violated duty of fair representation by failing to arbitrate grievance. Board found that charge demonstrated rational basis for union's actions; charging party failed to establish otherwise.	Board dismissed charge.
1633	California School Employees Association & its Chapter 82 v. Fullerton Joint Union School District	Union alleged that district violated EERA by unilaterally changing work schedules of custodians. Board found that charge established prima facie case. Dismissal reversed.	Board reversed dismissal and remanded for issuance of complaint.



### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1634-M	Donna Bartlett-May v. Otay Water District	The parties had settled the underlying case by stipulation to make the charging parties whole for lost pay and benefits, less mitigation after layoff. The Board adopted the ALJ decision finding there had been compliance.	The Board found the employer's liability terminated by rejection of valid offer of reinstatement and does not include increased tax liability for lump sum payment of back pay, expenses incurred in obtaining new employment or financial losses of family members.
1635-H	California State Employees Association v. Trustees of the California State University (San Marcos)	Union alleged that university violated HEERA by unilaterally changing employee performance rating procedures. Board found that matter was within scope and that union did not waive right to negotiate. Violation sustained.	Board found that university violated HEERA.
1636-M	Delores Banks & Piyanoot Molidpiree v. Service Employees International Union, Local 790, AFL-CIO	Charge alleged that union violated duty of fair representation by failing to adequately prosecute an unfair practice charge before PERB. Board found that charge failed to establish a prima facie case.	Board dismissed charge.
1637-M	Engineers & Architects Association v. Public Transportation Services Corporation	Charge filed to determine whether PTSC employees were subject to MMBA or Public Utilities Code (PUC). Board found that PTSC was properly subject to PUC.	Board dismissed charge and complaint.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1638-H	Regents of the University of California v. California Nurses Association	University alleged that union violated HEERA by engaging in a sympathy strike in violation of contract. Board remanded charge for further investigation of extrinsic evidence.	Board reversed dismissal and remanded case for further investigation and processing.
1639	Salinas Valley Federation of Teachers, AFT Local 1020, AFL-CIO	The Federation alleged the District unilaterally required math instructors to teach during their enrichment period without giving the Federation prior notice or opportunity to bargain over this change. The Federation also asked that the charge be remanded to the General Counsel's office for further investigation because of the Board agent's confusion regarding the facts as shown in the warning letter.	The Board found that the claim involved an alleged increase in instructional time, not performance of new duties. The length of the instructional day is a managerial prerogative unless it impacts the length of the employees' workday or duty-free time. The Federation did not show impact on the length of the workday or duty-free time. It is up to the Federation to provide a clear and concise statement of the facts alleged to comprise an unfair practice. The Federation had adequate opportunity to allege such facts and so the Board chose not to remand.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1640	California School Employees Association v. Lucia Mar Unified School District	This case involves compliance proceedings for 1440 in which the Board found that the District unlawfully contracted out transportation services to STA, which were previously performed by unit members of CSEA. The District was ordered to terminate the existing contract with STA at the earliest opportunity and make the employees whole.	The Board found that the District had avoided compliance with 1440 for 3 years and had ignored a lawful opportunity to terminate the contract. The District sent the Board a letter dated June 4, 2004 that the parties agreed to a contract termination deadline of July 30, 2004 and withdrew its exceptions. The Board agreed to this deadline.
1641-M	Michael F. Lopez v. City of Milpitas	Charge alleged that city violated MMBA by discriminating against charging party for protected activities. Board adopted proposed decision finding that charging party failed to establish required nexus.	Board dismissed charge and complaint.
1642-H	Academic Professionals of California v. Trustees of the California State University	APC alleged that the University unilaterally implemented Employee Assistance programs at two campuses.	Board found charge untimely as to one campus and that at the other campus the Employee Assistance Program is outside the scope of representation when there is no direct impact on wages and hours, it is voluntary and not held during school hours.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1643-M	Robin Giovanni Montgomery v. City & County of San Francisco	Board dismissed charge as untimely where conduct alleged as discriminatory occurred more than three years prior to filing of charges.	Refilling of charges previously filed and dismissed was untimely under MMBA. Refilling charges already dismissed can be an abuse of process that could lead to sanctions.
1644-M	Robin Giovanni Montgomery v. SEIU Local 790	Charge alleged that exclusive representative failed to file grievances and conspired with employer in violation of MMBA to terminate employment of Montgomery.	Charges were dismissed as they were not timely filed under the MMBA.
1645	James Eric Ferguson v. Oakland Unified School District	Charge alleged District took adverse action by transfer of Ferguson from High School to Middle School.	Board held objective reasonable person standard must be used in evaluating whether there has been an adverse action. Where employee duties and compensation are the same, facts must show reasonable employee would consider the transfer adverse.
1646	James Eric Ferguson v. Oakland Education Association	Ferguson alleged breach of duty of fair representation by exclusive representative for failure to pursue grievance.	Board found there is not necessarily a breach for failure to pursue grievance after employee has rejected settlement.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1647	Chula Vista Elementary Education Association, CTA/NEA v. Chula Vista Elementary School District	The Association claimed that the District interfered with employee rights when the charter school principal intimidated and harassed teachers regarding a Migden election to determine the public school employer for Mueller Charter School.	The majority found that the principal was an agent of the District, that the principal's conduct interfered with teachers' protected rights, that the principal's conduct had an impact on the employees' vote, and the remedy that the District promptly investigate and act on allegations of interference. The author of the majority believed that the election should be rescinded to adequately remedy the District's interference.

## 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1648	Lake Elsinore Teachers Association, CTA/NEA v. Lake Elsinore Unified School District	<p>The Association alleged that the District denied teacher Ausman rights to union representation. Ausman was asked to attend an investigatory meeting with the District's attorney regarding a coworker's claim of harassment by another teacher. Ausman asked for union representation but the request was denied on the basis that she was a witness and that it was not a disciplinary investigation of Ausman. At some point in the meeting, the investigation turned to Ausman's conduct and following the meeting, Ausman received a disciplinary memo. Ausman claims that at that time the District did not offer her the right to representation. Ausman did not again ask for representation.</p>	<p>The majority found that Ausman was denied her right to representation and disagreed with the District's argument that Ausman could not have believed she was not subject to discipline when she asked for representation. The nature of the interview was highly charged and formal. The alleged demeanor of the District's attorney toward Ausman was hostile. The Board also found the circumstances similar to the <u>Redwoods</u> case. Most importantly, the majority found that whether or not the discipline element existed at the outset, the District may not discipline Ausman after assuring her that no discipline would result from the interview. Once the employee has made a request for representation and the request was denied stating that no discipline would result from the interview, then the employer may not impose discipline as a result. Otherwise, the employee must repeatedly ask for representation or weaken the union's ability to represent her. Such a requirement does not serve the Supreme Court's intent in <u>Weingarten</u>.</p>

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1649-M	Union of American Physicians & Dentists v. County of San Joaquin	Union alleged that county violated MMBA by discriminating against physician for protected activities. Board adopted proposed decision finding that physician would have been terminated even absent protected activities.	Board dismissed charge and complaint.
1650	Empire Teachers Association v. Empire Union School District	Union alleged that district violated EERA by discriminating against three teachers for protected activities. Board adopted proposed decision finding a violation.	Board found that district violated EERA.
1651-H	Robert J. O'Malley v. California Nurses Association	Charging party alleged that union violated HEERA by improperly calculating agency fees. Board found that charging party lacked standing to bring charge.	Board dismissed charge.

### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1652	California School Employees Association & its Chapter 802 v. Lost Hills Union Elementary School District	ALJ held in proposed decision that District unilaterally implemented change in wage formula for composite classes of employees.	Board adopted ALJ decision as its own. Found statement that “ when you drive a bus you get bus pay and when you work as a custodian you get custodian pay, etc” is not clear and unambiguous statement that could be reasonably understood to mean District was going to discontinue use of wage formula for non-driving times relative to employees working as bus drivers part of the day and in other job classifications the rest of the day.
1653	Abdullah Malik v. Compton Community College District	Warning and dismissal letters were issued by Board agent without amendment to claim. Malik then filed one sentence appeal that did not conform to requirements of PERB Regulation 32635 (a)..	Appeal was dismissed as outside requirements of PERB Regulation 32635(a). Appeal shall state specific issues of procedure, fact, law or rational for which appeal is taken and identify the page or part of the dismissal to which each appeal is taken. The grounds for each issue shall also be included.



### 2003-2004 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1654-H	Academic Professionals of California v. Trustees of the California State University	APC alleged University violated HEERA by implementation of new fee waiver policy	Board found no unilateral change in fee waiver program policy when inclusion of mandatory courses does not mandate an employee to take course using the fee waiver program in a manner inconsistent with the parties' past practice.

## 2003-2004 DECISIONS OF THE BOARD

### ADMINISTRATIVE DETERMINATIONS

<b><u>DECISION NO.</u></b>	<b><u>CASE NAME</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>DISPOSITION</u></b>
Ad-328-S	Jesse Vickers v. State of California (Department of Corrections)	The State sought acceptance of a late-filed response to Vickers' appeal of a Board agent's dismissal.	The Board did not find good cause to excuse the State's late filing. The response was not properly mailed and the State's attorney had received the appeal in enough time to request an extension but did not take steps to ensure a timely filing.
Ad-329	Service Employees International Union v. County of Riverside	SEIU stated that it was withdrawing without prejudice its unfair practice charge without justification.	The Board found that the withdrawal was not in the parties' best interests or consistent with MMBA because (1) SEIU did not justify its withdrawal, and (2) SEIU had received a favorable decision from the ALJ, the County had appealed the decision, and therefore SEIU could not simply extinguish the case.

## 2003-2004 DECISIONS OF THE BOARD

### ADMINISTRATIVE DETERMINATIONS

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
Ad-330	Wheatland Elementary School District and Wheatland Elementary Transportation Organization and California School Employees Association & Its Chapter 626	The Organization appealed the Board agent's dismissal of its severance petition. CSEA requested that the Board extend the timelines for its late-filed response.	CSEA provided evidence that Organization did not send its appeal to the correct CSEA address after CSEA provided the Organization with a business card and made phone contact. As a result, it received the appeal late and filed its response only 5 calendar days after the postmark date on the appeal. The Board thus found good-cause to accept CSEA's late filed appeal. The Board adopted the Board agent's dismissal of the severance petition to separate bus drivers from the classified unit. The unit was not an appropriate unit under <u>Sweetwater</u> and its progeny. The drivers' dissatisfaction with CSEA was insufficient to show the key factors warranting a separate unit, such as community of interest, extent of organization, and efficiency of operations. The proposed unit did not include the mechanic position which shares a community of interest with the 5 bus driver positions in dispute since the mechanic maintains a bus drivers'

**2003-2004 DECISIONS OF THE BOARD**

**ADMINISTRATIVE DETERMINATIONS**

<b><u>DECISION NO.</u></b>	<b><u>CASE NAME</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>DISPOSITION</u></b>
			license and substitutes for absent drivers.
Ad-331-M	Service Employees International Union, Local 817 v. County of Monterey, Monterey County Park Rangers' Association	Parties requested that portion of proposed decision not subject to exceptions be severed and allowed to become final order.	Board granted request to sever case.
Ad-332	Santa Clarita Community College District and Part-Time Faculty United, AFT	PFU filed administrative appeal to lift stay of election. After election held, PFU requested to withdraw appeal.	Board granted request to withdraw administrative appeal.
Ad-333	Pleasant Valley Elementary School District and Group of Employees and SEIU Local 998	Kennaley appealed the administrative determination regarding his objections to the results of an election over his petition to decertify SEIU as the exclusive representative.	The Board found that each of the objections did not meet one or both of the criteria to set aside an election, namely: (1) as a threshold matter, improper conduct and (2) the conduct had a probable impact on the employees' vote. The Board thus found the objections to be without merit and upheld the Board agent's dismissal.

**2003-2004 DECISIONS OF THE BOARD**

**ADMINISTRATIVE DETERMINATIONS**

<b><u>DECISION NO.</u></b>	<b><u>CASE NAME</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>DISPOSITION</u></b>
Ad-334	Cheryl Henderson v. Los Angeles Unified School District	Henderson requested the Board excuse her late-filed appeal.	Henderson contended that her appeal was filed late because she misunderstood the procedures. The Board found that Henderson did not show good cause to accept her late-filed document because she made no attempt to understand the Board's procedures.
Ad-335	Cheryl Henderson v. Teamsters Local 572	Henderson requested the Board excuse her late-filed appeal.	Henderson contended that her appeal was filed late because she misunderstood the procedures. The Board found that Henderson did not show good cause to accept her late-filed document because she made no attempt to understand the Board's procedures.
Ad-336-M	Coachella Valley Mosquito & Vector Control District and California School Employees Association & its Chapter 2001	Administrative appeal filed over Board agent's determination that petition was untimely. Board did not find good cause to excuse late-filed petition.	Board affirmed administrative determination.

**2003-2004 DECISIONS OF THE BOARD**

**ADMINISTRATIVE DETERMINATIONS**

<b><u>DECISION NO.</u></b>	<b><u>CASE NAME</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>DISPOSITION</u></b>
Ad-337-H	George Sarka v. Regents of the University of California	Sarka requested that the Board grant him special permission to appeal the refusal of a Board agent to disqualify herself from investigation of his unfair practice charge.	The Board denied Sarka's request.

## 2003-2004 DECISIONS OF THE BOARD

### INJUNCTIVE RELIEF REQUESTS

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
I.R. 457	Health Services Agency Physician Association v. County of Santa Cruz	Association sought injunction to prevent County from implementing planned lay offs.	Request denied 07/08/03.
I.R. 458	Long Beach Community College Policy Officers Association v. Board of Trustees, Long Beach Community College District	Association sought injunction to prevent District from contracting out police and safety services.	Request denied 07/14/03.
I.R. 460	Inyo County Employees Association/AFSCME Local 315 v. County of Inyo	The Association sought to enjoin the County from terminating County employees' participation in the CalPERS program prior to completion of bargaining.	Request withdrawn 08/19/03.
I.R. 461	Alameda County Probation Peace Officers' Association v. County of Alameda	The Association sought to enjoin the County from transferring positions out of the bargaining unit prior to completion of bargaining.	Request denied 10/03/03.
I.R. 462	Grant District Education Association v. Grant Joint Union High School District	The Association sought to enjoin the District from involuntarily transferring a teacher to another work location in retaliation for participation in protected activities.	Request denied 11/14/03.

**2003-2004 DECISIONS OF THE BOARD**

**INJUNCTIVE RELIEF REQUESTS**

<b><u>DECISION NO.</u></b>	<b><u>CASE NAME</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>DISPOSITION</u></b>
I.R. 463	Centinela Valley Union High School District v. Centinela Valley Secondary Teachers Association	The District sought to enjoin the Association from failing to provide to the principal a copy of materials distributed through school mailboxes.	Request denied 10/31/03.
I.R. 464	Compton Firefighters, International Association of Fire Fighters Local 2216, AFL-CIO	The City was alleged to have fired the union's chief negotiator and refused to meet with other members of the bargaining team.	Request withdrawn 12/22/03.
I.R. 465	International Association of Firefighters, Local 188 v. City of Richmond	The City was alleged to have failed to meet and confer over the decision and effects of a lay off.	Request denied 2/9/04
I.R. 466	International Union of Operating Engineers, Unit 12 and 13 Division v. State of California, California Youth Authority and Department of Personnel Administration	The Union sought to enjoin the State from laying off employees and failing to negotiate over the determination of the area of layoff for the closure of the California Youth Authority's Northern California Reception Center.	Request denied 3/4/04



## 2003-2004 DECISIONS OF THE BOARD

### INJUNCTIVE RELIEF REQUESTS

<b><u>DECISION NO.</u></b>	<b><u>CASE NAME</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>DISPOSITION</u></b>
I.R. 467	International Union of Operating Engineers, Local No. 3 v. City of Isleton and Isleton City District Fire Department	The Operating Engineers sought to enjoin the City from refusing to recognize the union for their employees, discharge of all firefighters and creation of a joint powers authority to avoid unionization.	Request withdrawn 3/22/04
I.R. 468	Centinela Valley Union High School District v. Centinela Valley Secondary Teachers Association	The Centinela Valley Union High School District sought to enjoin the Association from unlawfully implementing a unilateral change with respect to notification of school principals regarding distribution of Association flyers in District mailboxes.	Request denied 4/29/04
I.R. 469	Service Employees International Union v. County of Ventura	The Association sought to enjoin the County's implementation of a new payroll system.	Request withdrawn 5/14/04

## **2003-2004 LITIGATION ACTIVITY**

Turlock Joint Elementary School District v. Public Employment Relations Board/Turlock Teachers Association, Fifth District Court of Appeal, Case F041187 (PERB Decision 1490) [SA-CE-2003-E]. Issue: Did PERB err when it found the District violated the EERA by prohibiting teachers from wearing buttons in support of the union. On 10/3/03 the Court issued a decision overturning the PERB decision. On 1/22/04 the court's decision was depublished by the California Supreme Court.

Turlock Joint Elementary School District v. PERB / Turlock Teachers Association, California Supreme Court, Case No. S120371 (Appealing Case No. F041187) [No. 1490, Case SA-CE-2003]. Issue: On 11/7/03, the Board petitioned the California Supreme Court for review of the Fifth District Court of Appeals decision in Turlock Joint Elementary School District v. PERB (5 Cal.Rptr.3d 308, 2003 WL 22272602 (Cal.App.5th Dist.)). The issue presented to the Court was whether Education Code section 7055 authorizes school districts to prohibit public school employee speech that is essential to collective bargaining under the Educational Employment Relations Act. On 1/22/04 the Court denied the petition for writ of review and ordered the Court of Appeal decision to be depublished. On January 27, 2004, the District Court of Appeal certified that the original opinion or decision entered on October 3, 2003 as final.

Laborers International Union of North America and Rocco Davis v. State Employees Trades Counsel United, et al., San Bernardino County Superior Court Case SCVSS 094642 (PERB Cases LA-AC-58-H and LA-CE-709-H) Issue: LIUNA requested that PERB file an amicus brief with the San Bernardino Superior Court "explaining that superior courts—not PERB—have jurisdiction to determine the contractual propriety under a union's constitution of an alleged union restructuring, and the disposition of assets as a consequence thereof." LIUNA filed its request that PERB file an amicus brief in support of its position on 11/4/02. On 11/12/02, PERB notified the parties of its intent to intervene in this case and claim jurisdiction over the issues. The Court granted PERB's request to intervene. On 4/20/04 the parties entered a stipulated order with the court and continued the status conference until 10/5/04.

Laborers International Union of North America and Rocco Davis v. Superior Court for the County of San Bernardino, et al., Fourth District Court of Appeal Division Two Case E032780, appealing San Bernardino County Superior Court Case SCVSS 094642 (PERB Cases LA-AC-58-H and LA-CE-709-H) Issue: Did the Superior Court err when it found that PERB had jurisdiction over the underlying issues in this case? On 11/25/2002, LIUNA filed its Petition for Alternative Writ of Mandate. SETC filed its Preliminary Response on 12/5/2002 and the Court summarily denied the Petition for Alternative Writ of Mandate on 12/17/2002. The case is in abeyance at the request of the Laborers and will be dismissed upon completion of the settlement in the fall of 2004.

Coachella Valley Mosquito & Vector Control District v. Public Employment Relations Board/California School Employees Association Docket No. 03-O-0340. Fourth District Court of Appeal, Division Two, Case E033577 [Unfair Practice Charge No. LA-CE-65-M]. Issue: Does PERB have jurisdiction over violations of the MMBA occurring more than six months prior to the filing of the charge and within the three-year statute of limitations set forth in Code of Civil Procedures section 338? Petition for Writ of Mandate and Request for Stay of Proceedings filed on 4/24/2003. On 6/3/2003, the Court Granted the Petition for Writ of Mandate. PERB is ordered to vacate its 4/11/2003 order denying Petitioner's motion to stay proceedings of PERB Case No. LA-CE-65-M and to grant the motion to stay the PERB proceedings pending a decision in the 4<sup>th</sup> DCA, Division 2 Case No. E031527. PERB filed its Return to Peremptory Writ of Mandate on 8/21/2003, which included a copy of the Order Granting Motion to Stay that PERB issued in the underlying unfair practice case on 6/9/2003.

B. Benedict Waters v. Tammy Samsel & Robert Thompson, US District Court, Northern District of California, Case CVC 02 4589 EDL ADR. Issue: Plaintiff alleged that his due process rights guaranteed by the US Constitution were violated in his dealings with the PERB employees named as Defendants. On 11/21/02, PERB was served with the Summons and Complaint which had been filed with the Court on 9/23/02. On 5/13/03, PERB received information that Mr. Waters had filed a Second Amended Complaint in which he named the Board members as Defendants. The case was dismissed by the court on 12/22/03.

B. Benedict Waters v. Tammy Samsel & Robert Thompson et al., Ninth District Court of Appeal, Case No. 04-15193. Issue: Plaintiff alleges that his due process rights, guaranteed by the US Constitution, were violated in his dealings with the PERB employees named as Defendants. A notice of appeal was filed on January 16, 2004. The case is pending.

IUOE Local 39 v. County of Placer and Placer County Civil Service Commission [Cross-Complaint] County of Placer v. IUOE and PERB, Placer Co. Superior Court Case No. SCV 13694 (SA-CE-78-M). Issue: County requested Court to find PERB's administration of the MMBA over a Charter County is contrary to the California Constitution. On 12/13/02, PERB was served with Placer County's Notice of Motion and Motion for Leave to File Cross Complaint; Supporting Papers; Memorandum of Points & Authorities; [Proposed] Order to Show Cause. On 3/26/03, the Court denied the County's Motion to File a Cross-Complaint and Motion for Preliminary Injunction and Stay. On its own motion, the Court stayed the current Superior Court action pending resolution of the underlying PERB matter.

County of San Joaquin (Health Care Services) v. PERB / UAPD, Third District Court of Appeal, Case 3 Civil C044230 (PERB Decision 1524) [SA-CE-19-M]. Issue: Did PERB err when it decided that the County had discriminated against Dr. Gran and when it made Dr. Gran whole for expenses incurred during the Medical peer review proceeding? Petition for Review filed on 6/11/2003. On 12/4/03, the petition for review was denied.

Public Employment Relations Board v. Victor Valley Community College District / Part-Time Faculty United, AFT, San Bernardino County Superior Court, Case VCVVS 02681 (PERB Decision 1543, LA-CE-4349-E). Issue: PERB obtained a Court order enjoining the District from encouraging employees to join, recognizing or negotiating with one employee organization in preference to another regarding matters related to part-time faculty employees. On September 12, 2003 a Request for Dismissal was filed with the Court.

Coachella Valley Mosquito & Vector Control District v. PERB/California School Employees Association, Fourth District Court of Appeals, Case No. E 031527 (Appealing Riverside Superior Court Case No. INC 026814) [Case LA-CE-1-M]. Issue: Did the trial court err when it determined that PERB has jurisdiction over unfair practices under the MMBA which occurred more than six months prior to the filing of the charge and within a 3-year statutory limitation period as per Code of Civil Procedures section 338? The Court issued its decision on 12/9/03 concluding “that the six-month limitations period of section 3514.5 [sic] applies to MMBA unfair practices filed with the PERB on and after July 1, 2001. This shortened limitations period is not to be retroactively applied, however. Charges based on unfair practices occurring before July 1, 2001, are timely filed if filed with the PERB on or before December 31, 2001, provided the charges were not barred by the prior three-year limitations period on the date filed. Additionally, the PERB’s issuance of a complaint based on unfair practices occurring before July 1, 2001, is not a retroactive application of Senate Bill No. 739.” The six-month statute of limitations applies to all cases filed on or after January 1, 2002.

Coachella Valley Mosquito & Vector Control District v. PERB / California School Employees Association, California Supreme Court, Case No. S122060 (Appealing 4<sup>th</sup> District Court of Appeals Case E031527) [Case LA-CE-1-M]. Issue: Did the appellate court err when it determined that PERB did not have jurisdiction over unfair practices under the MMBA which occurred more than six months prior to the filing of the charge and within a 3-year statutory limitation period as per Code of Civil Procedures section 338? A petition for review was filed by PERB on 1/16/04. On 1/27/04 the court granted the petition for review.

Fresno Irrigation District v. Public Employment Relations Board / Fresno Irrigation District Employees Association, Fifth District Court of Appeal, Case No. F044698 [No. 1565-M, Case SA-CE-29-M]. Issue: Did PERB err when it decided that the District had violated the Association’s right of access to District facilities for its meetings? Verified petition for Writ of Review filed by District on 1/14/04. On 6/10/04, the Court issued a Writ of Review and set oral argument for 9/8/04.

Long Beach Community College District v. Public Employment Relations Board / Long Beach Community College Police Officers Association, Second District Court of Appeal, Division 8, Case No. B172348 [PERB Decision No. 1568, Case LA-CE-4532-E]. Issue: Whether the PERB decision, which reversed a board agent’s dismissal and ordered the General Counsel to issue a complaint, was a final decision of the Board pursuant to Government Code section 3542(b), and thus subject to a petition for a writ of extraordinary relief? Petition for writ of review filed by District on 1/12/04. On 1/28/04, the Court issued order denying petition.

Public Employment Relations Board v. California State Employees Association, Sacramento Superior Court Case No. 02A303845, IR No. 440 [Case SA-CO-249-S]. Issue: PERB obtained a preliminary injunction to enjoin CSEA from suspending Jim Hard and Cathy Hackett from their elected offices. A request for dismissal was filed with the Court on January 13, 2004, based on PERB's acceptance of CSEA's withdrawal on 12/31/03 of its exceptions to the proposed decision in the underlying unfair practice case. On 1/16/04 the request for dismissal was entered as requested and endorsed by the Court.

Richard T. Abbate et al. v. Santa Clara County, Santa Clara County CPOA et al., Docket No. 04-A-0351, Superior Court of Santa Clara County Case Number 1-03-CV-003038, Unfair Practice Charge No. SF-CO-47-M. Issue: Santa Clara County Correctional Peace Officers Association requested PERB file an amicus brief in the case which alleges in part a violation of the duty of fair representation by the Association. On 5/10/04, SCCCPOA filed a letter requesting PERB's appearance at the June 8, 2004 hearing on SCCCPOA's motion to dismiss and First Amended Complaint For Declaratory Relief to Determine Validity for Elections of Directors. On 5/27/04 PERB filed its Petition for Leave to file Amicus Curiae Brief and on 6/3/04, PERB filed its Application for Order Shortening Time.

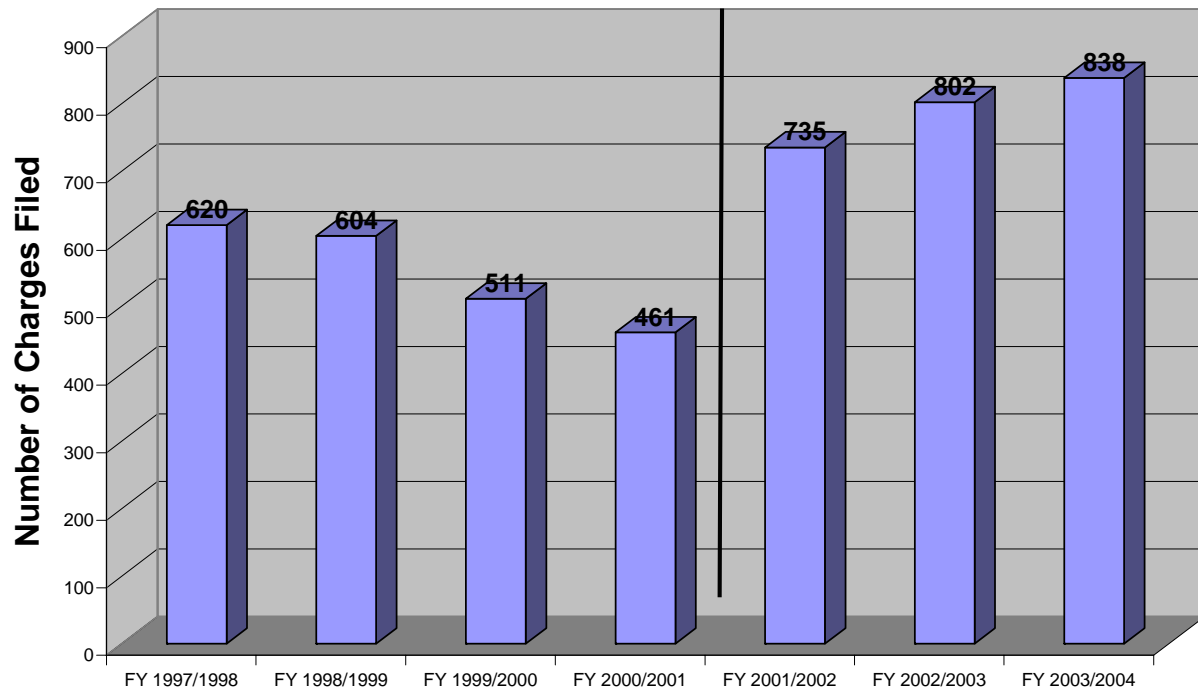
Marcin Gruszecki et al. v. Santa Clara County, Santa Clara County CPOA et al., Docket No. 04-O 0352, Superior Court of Santa Clara County, Case Number 1-04-CV018778, Unfair Practice Charge No. SF-CO-47-M. Santa Clara County Correctional Peace Officer Association requested PERB file an amicus brief in the case which alleges in part a violation of the duty of fair representation by the Association. On 5/10/04, SCCCPOA filed a letter to request PERB's appearance at a May 24, 2004, hearing on plaintiff's request for a preliminary injunction and PERB's appearance in the June 8, 2004, hearing on SCCCPOA's motion to dismiss. On 5/20/04, PERB filed its Petition for Leave to File Amicus Curiae Brief and Points and Authorities of Amicus Curiae in Support of Defendant's Opposition to Injunctive Relief and Motion to Dismiss. On 5/28/04, Judge Lucas issued an order requiring PERB to copy and serve on Plaintiffs the legislative history for SB 739. On 6/4/04, PERB filed its Certificate of Service complying with the Judge's Order.

Huntington Beach UnHSD v. PERB / District Educators Association, CTA/NEA, Docket No. 03-O-0345. Fourth District Court of Appeals, Division Three, Case G032402 (PERB Decision No. 1525)[LA-CE-4234-E]. Issue: did PERB exceed its jurisdiction when it ordered the District to negotiate with the Association regarding the creation of new librarian positions and hours of operation for the District's libraries? Petition for review filed by the District on 6/12/2003. Petition for review denied on 3/25/04.

Huntington Beach Union High School District v. PERB / California School Employees Association, California Supreme Court, Case No. S123795 (Appealing 4<sup>th</sup> District Court of Appeals Case G032402) [Case LA-CE-4234-E]. Issue: Did PERB exceed its jurisdiction when it ordered the District to negotiate with the Association regarding the creation of new librarian positions and hours of operation for the District libraries? A petition for review was filed by the District on 4/2/04. On 5/12/04, the Court denied the petition for review.

California School Employees Association v. Lucia Mar Unified School District, Student Transportation of America, Inc., et al Docket No. 03-O-0339. San Luis Obispo County Superior Court Case CV 030250. [PERB Decision No. 1440, Unfair Practice Charge No. LA-CE-4194-E]. Issue: PERB is conducting a compliance hearing regarding Decision No. 1440. CSEA also filed this complaint in the Court for Declaratory Relief on Written Contract. PERB is not a party to the action. On 2/3/2004, the Court granted Student Transportation's Motion for Summary Judgment and modified STA's contract with the District to terminate on 7/24/05.

## Unfair Practice Charge Filings



Note: Vertical line illustrates when MMBA jurisdiction took effect (July 1, 2001).